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**Vol. II**

**TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1942**

**No. 246**

**CHARLES CORYELL, ET AL., PETITIONERS,**

**JOHN S. PHIPPS AND GEORGE J. PICKINGTON**

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE FIFTH CIRCUIT**

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**PETITION FOR CERTIORARI FILED JULY 20, 1942.**

**CERTIORARI GRANTED OCTOBER 12, 1942.**



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VOLUME II.

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Office - Supreme Court, U. S.

FILED

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UNITED STATES  
CIRCUIT COURT OF APPEALS  
FIFTH CIRCUIT.

No. 10185

CHARLES CORYELL, ET AL.,

Appellants,

versus

JOHN S. PHIPPS and GEORGE J. PILKINGTON,

Appellees.

Appeal from the District Court of the United States for  
the Southern District of Florida.

(ORIGINAL RECORD RECEIVED DEC: 17/41.)

JUL 17 1942

*John S. Phipps*  
CLERK



The Court:

That calls for yes or no; you answered yes, did you?

A. I can't hear very good.

The Court:

I say, that calls for a yes or no answer.

A. Oh, that calls for a yes or no answer? Oh, yes, he told me.

Q. Now, will you tell us what Thomas told you at that time about the cause of the fire?

Mr. Underwood:

If your Honor please, I object to that question.

The Court:

I think it is for the purpose of impeachment alone.

Mr. Underwood:

So far as Thomas being an adverse witness is concerned, I would like to say this: I have given to Mr. Botts, at his request, an enumeration of the expenses paid by the Palm Beach Company on behalf of Thomas, and the monies paid to Thomas, from the time of the fire down to date. There is no proof here that Thomas is an adverse witness; there was no evidence of adversity on the stand. He wasn't difficult to handle; he was pleasant, and he answered all their questions apparently to the best of his recollection, and there isn't any proof yet that he ever told anything to the contrary. He talked with them before the fire, talked with several of them, talked with Mr. Matteson, Mr. Dyer, Mr. Jones, and he didn't sign a statement for me. There is no proof that he is an adverse, cantankerous witness at all.

The Court:

I don't want to argue with you at all, Mr. Underwood, but sufficient appears there to show that he was reticent in regard to receiving pay from the Palm Beach Company. He was asked questions which should have elicited that information on direct examination, and he only brought that out on cross examination.

Mr. Underwood:

Well, my feeling was that he understood the question as I myself did until I read it in the record later. He was asked about benefits.

The Court:

He was asked the same question over and over,—not the same question, but asked in so many different ways by Mr. Botts as to whether he was receiving any remuneration from the Palm Beach Company, which I think he should have answered Mr. Botts and given the information which he did on cross examination. So I think that under that phase of it he is sufficiently hostile to justify overruling your present objection to the question, which is asked for an impeachment purposes. I will say this, however, in regard to the impeachment of Thomas, I don't think at all the time that elapsed before he was carried to the Palm Beach Hospital, but I think he was probably correct, that he was greatly under the influence of narcotics at the time that he had these alleged conversations; he claims that, and from the character of his injuries I would say, without any direct evidence, as to what narcotics he had administered him, that he must have been "doped" up, as the expression does, for some time after being carried to the hospital. So I mention that to give you my views as to what he said, in advance, of his not being able to remember what the statement was.



Mr. Matteson:

Well, we are not referring to that conversation now.

The Court:

While I have overruled your objections, as I recall the testimony Thomas was very indefinite about these conversations about which he was asked; in other words, he denied outright certain conversations, others he didn't remember, and he stated that he was under the influence of narcotics at that time. So, while I have overruled this objection, I am going to allow him to answer it. I don't attach any great deal of importance to your impeachment.

Mr. Matteson:

Well, after the record is made, your Honor, will be able to judge that clearly.

Q. Was your interview with Thomas on July 13, do you recall?

A. Well, I couldn't say that that is the exact time or not; but as I say, we went to the hospital.

Q. Have you some memorandum that will refresh you, that will refresh your recollection as to that date?

A. No, I can't; I have nothing that I remember; but I made,—I went home and made some notes and typewritten them out, that is what I thought, kind of an idea, and then I think I mailed a copy down, or kept it, I don't know; but the notes themselves, or the scribblings that I made on a piece of paper, why I chucked them in a wastebasket.

Q. Did you go down to Mr. Batchelor's office and prepare memorandum there, do you recall?

A. That, I can't say; it seems to me that I wrote it out and sent it down to him, or took it down to him. It might have been some other time we made it out.

Q. I show you this paper and ask you if that refreshes your recollection of anything?

A. Well, I be darned if I know; that is too good typewriting for me; that is not my typewriting, but it is evidently about what I told him though.

Q. About what you told him?

A. Told,—that is written, that I either had written or told Batchelor at the time. Because, I say, it is not my typewriting; my writing isn't as good as that.

Mr. Matteson:

Will you mark this for identification?

(The said paper was marked Libelants' Exhibit No. 95 for identification.)

Q. This memorandum says "Saw Thomas"—

Mr. Underwood:

I object to reading the memorandum.

Q. I will show you, Mr. McCoy, this statement and ask you if this is what Thomas said to you at that time:

The Court:

Are you relying on that being a verbatim, in effect, statement of what you asked Thomas, and he said he did not remember?

Q. I will ask you to read it over, Mr. McCoy.

The Court:

Let me ask you, for what purpose are you offering the witness that paper?

Mr. Matteson:

He has said that in substance it was what he reported to Mr. Batchelor from his notes, of his conversation with Thomas at Palm Beach.



The Court:

Well, are you offering it merely for the purpose of refreshing his memory?

Mr. Matteson:

Yes.

The Court:

Well, in effect, I don't think he said,—Do you want him to read and then state whether that refreshes his memory?

Mr. Matteson:

If your Honor please, I am a little bit confused under the practice here. I understood that your suggestion was to ask him if he didn't make specific statements, quoting those statements.

The Court:

Yes, but those statements must be the ones that you asked Thomas.

Mr. Matteson:

That is exactly what we will do.

The Court:

If that paper was made by Mr. McCoy,—I understand him to say that he didn't make it, but he said that he did see and talk with Mr. Batchelor. Now if you make it clear that that paper was written out by Mr. Batchelor in a conference with Mr. McCoy, then it would be competent for you,—if he wants that paper to refresh his memory, he can utilize that paper.

Mr. Matteson:

We have marked it for identification, and if he needs it, we will have him refer to it.

Q. I want to ask you, Mr. McCoy, that if on the occasion of the conversation with Thomas, that you have just referred to at Palm Beach—

A. It is fresh in my mind.

Q. —did he say to you, "Him" (referring to Abel) "and I met at the engine room window and he crawled through, I said 'don't strike a match, as I smell gasoline'; from where I stood, I could see Abel at the switchboard, and also a view of the switchboard. Abel was there for about half a minute and we saw the glow like a short circuit on the switchboard, and then a blue flame". Did he make that statement to you at that time?

A. He certainly did.

Mr. Underwood:

I object on two grounds; those that I have mentioned before, and on the ground that the date has not been fixed. Thomas was asked particularly as to the date, and this witness does not fix the date.

The Court:

He has fixed it as best he could as I understand it. I overrule the objection. Now, is that the statement that you asked Thomas, whether he made that and he said he didn't remember?

Mr. Underwood:

Yes, sir. That is it.

Q. Now, Mr. McCoy, you have described to us your experience in the construction and operation of gasoline boats and the installation of gasoline engines. I show you this Exhibit, Libelants' Exhibit No. 2, which is said to be part of the gasoline line connecting one of the tanks of the Seminole, either with the other tank, or with the gasoline feed lines.

A. That wasn't large enough to connect between, from tank to tank.

Q. Wait just a minute.

A. I should think that would run to one of the auxiliaries.

Q. Well, I am not asking you that, Mr. McCoy. You told me that you couldn't identify anything that you saw here.

A. I could not; but I am only judging from the size of it.

Q. Now, please listen to my question, and answer the question that I ask you. I said, assuming that this is a piece of the gasoline line connecting one of the tanks of the Seminole with the other tanks, or with one of the gasoline feed lines,—

A. Correct.

Q. In the light of your experience as an engineer and a constructor and an installer of gasoline engines, will you tell us whether that is a safe and proper line to be used for that purpose?

A. Well, today I would not—or that it ought to have been a copper pipe, or brass, bent, not all them darned elbows and going around those little short places; go to work and put on a piece of copper pipe, and copper tubing, of the same diameter, the copper is soldered; take and flow it around almost like a piece of lead; fit it in the corners and everything, and it wouldn't break from vibration, like that stuff will.

Q. You spoke of the connections on it; what is wrong with those, if anything?

A. Supposing that that type is stretched out, as it ought to be, we will say, when the little auxiliaries are running, there is a great deal of vibration; not right away but ultimately it will break off at one of these threads in there, because I have had it do the same thing various times. We had it on a boat up in New York.

Q. Is there—

A. It localizes right at the fitting,—the vibration.

Q. Is there any difficulty about keeping the treaded connections tight in a line in which there are connections like these?

A. A gasoline line really ought to be sweated, what they call sweated. The threads,—the male threads are sweated, are tinned; the female threads are sweated and then put together with—put a blow torch on them, and that makes them absolutely gas tight.

Q. Well, can you tell whether these have been treated in that way?

A. From the outside appearance I would say no, they hadn't; they had not.

Q. From your experience can you tell us, if that process was not followed, if there would be any difficulty in keeping connections always tight?

A. I think that ultimately you would have to tighten them up, tighten them all up again, after running,—that is, I mean perhaps a series of years there is bound for some of them to get loose.

Q. I show you this Exhibit, Libelants' Exhibit No. 11, which is said to have been a pair of valves used at the end of a line, the purpose of which was to permit drawing off of gasoline in the engine room; these valves being the shut-off valves at the end of that line; and I ask you whether in your opinion these are proper and safe gasoline valves?

A. Well, it looks to me as though that one valve was leaking, and they stuck another one in there to rectify the leak.

Mr. Underwood:

If your Honor please, I move to strike that out.

The Court:

Granted.

Q. That wasn't what I asked you. I asked you about the valves, as to whether they are proper gasoline valves.

A. I couldn't tell until they are taken open. There might be a combustion seat under there that would eat away under gasoline; it might be suitable for water.

Q. Are you familiar with this type of valve?

A. No, that's a water valve, I think, from the looks of it.

Q. What is the difference?

A. Well, it is the same as water takes; that is gasoline would seep through the smallest possible kind of opening, whereas water would clog itself, and wouldn't go through there with the same pressure or half the pressure. Cast-iron will keep gasoline in; it wouldn't keep kerosene in, because it will work right through cast-iron.

Q. How about the gasoline.

A. Gasoline is the same as kerosene; seeps right on through. The only thing, the difficulty of gasoline, is that it evaporates, and you don't notice the leak like you would with kerosene or water.

Q. Now, what can you tell us, Mr. McCoy, in the light of your experience, as to the propriety of having a draw-off valve in the engine room of a gasoline vessel?

A. A draw-off valve in the engine room should not be allowed on account of, that when you draw gasoline, there is fumes, you can't help it, the fumes get around, and if you have got any open fires, might be back of a bulkhead, and the gas stays down and goes underneath these openings in the bulkhead, comes up to the fire and you have got an explosion.

Q. Well, my question was, do you consider that it is proper or safe to have such a connection for use in the engine room of a gasoline boat?

A. I do not.



Mr. Bötts:

May I ask this question: Would you be able to procure the tools that will be necessary to take this open, so that this could be done after lunch, you could take it open and tell us about it?

A. Why yes, certainly.

The Court:

We will recess until 2:00 o'clock.

(Thereupon a recess was taken to 2:00 P. M., March 21, 1939—the same day.)

March 21, 1939—2:00 o'clock P. M.

### Afternoon Session.

Appearances same as heretofore noted.

871 BENJAMIN FRANKLIN McCOY resumed the stand and was examined and testified further as follows:

### Direct Examination (Cont'd.)

By Mr. Matteson:

Q. Mr. McCoy, you told us about observing the tanks on the Seminole, the gasoline tanks, and you told us about looking at them from underneath?

A. Yes, sir.

Q. Now will you tell us from your observation of these tanks and what you saw of their installation whether in your opinion, in the light of your experience, they were proper tanks for gasoline on a boat of this size?

A. I think the tanks, the way they were set there, were improperly installed.

Q. For what reason?

A. In the place of—they could not be altogether drained out because of the fact that the gasoline discharge, as I said, was four inches or five inches or six inches, maybe seven, above the bottom and that left a pocket in the tank where all water and dirt and everything like that, would seep. If, on the contrary, they reversed these tanks, with the convex side down, and used that for the discharge, then those tanks could have been thoroughly drained if the drain pipe was below the bottom of the tank, and the result of that water laying in there and dirt why it just simply formed corrosion, and it is only a question of time that these tanks would leak.

Q. You talk of water in the tanks. Of course these were gasoline tanks.

A. Yes, but there is a certain amount of water that gets into gasoline for some reason, atmosphere conditions; a tank will "bleed", as they call it, and cool off, and air goes into the tank through the vents. I mean a tank when it is about half full of gasoline. On a warm day the air causes expansion and out goes the air. Everytime it comes in it brings in a certain amount of moisture and that moisture is condensed in the tank.

Q. Is that what you observed as the result of your experience?

A. Yes, sir, that is what I have observed as a result of my experience, because I have observed tanks and put in all kinds of gasoline and for some reason I would always get a certain amount of water about it.

Q. Now will you tell us, Mr. McCoy, as a result of your experience, as to what provision should be made for the ventilation of the engineroom of a yacht the type of the Seminole when she is laid up?

A. The bilges should all be opened, that is, I mean the floor coverings and hatches and of course along the passageway and all windows should be opened so that a draft of air can go through, because if there is any slow leak-

age at all in a compartment which is closed up it stays there, and the first thing you know you have an explosive mixture, which means that something might just accidentally set it off.

Q. The testimony is that this engineroom had a skylight on the top which was closed, it had a hatch on the deck above which was closed; it had a window in each side, both of which were closed; that in the deck above there were two cowl ventilators about 14 inches in diameter which came down from above the deck. Would you consider that that was sufficient ventilation for an engineroom such as the Seminole had when the boat was laid up?

A. I would not. Gasoline fumes are heavier than air, and the air being the lightest it would come to the top and the gasoline fumes would stick down, stay down. You couldn't ventilate that type of engineroom through these ventilators as you described unless you had a power ventilator system on them.

Q. How important do you consider this matter of ventilation?

A. Well, I consider it one of the most important matters. When we laid up the Blue Lagoon we always took up the floor boards and opened all of the windows so as to allow the air to go through her. Now up there in the north when I was Captain of the Saggitta—when I was Captain of her—she was a gasoline boat 85 by 10; I took her to Seabury's and perhaps she would have two or three hundred gallons of gasoline in her, and there they told you you could take all of that gasoline out and if we didn't do it they would take it out. Then they would disconnect the union at the carburetor and open all the valves and drain all of the gasoline that was in the gasoline line and out of the carburetor, and then the boat was ready to be taken off the drydock and put into the storage shed, and then they would still have the windows open so as to allow proper ventilation.



Q Now you just touched on a point that I was coming to. I want to ask you about the safety of laying up a boat of the gasoline type with gasoline in her tanks. What can you say about that?

A Well, if the boat catches fire with no gasoline in it, it is simply a wood fire, but if you have gasoline in the tanks, and the tank goes off, you have something else to fight, something that throws a fire in all directions. There is where the danger comes in.

Q In the course of your experience have you become acquainted with the practice in a considerable number of yards as to the storage of vessels with gasoline in them; are you familiar with the practice as to the storage of vessels with gasoline—

A Well, up there at Seabury's in New York, which was a consolidated shipyard—I had three or four—oh, yes,—I have had years of experience there, and they always stressed the idea that all gasoline must be out of the vessel before they would lay her up, and that was a high grade yard; they used to boil gasoline for power—

Q Never mind that. Have you observed the practice in other yards besides the one you mentioned?

A Well, about the only one was down here—yes, up at Daytona we stored boats with McDonald's Yard and they requested that we take all gasoline out of the vessel, and Pilkington was the same way, insisted on it.

Q Now I would like to ask you this question as an engineer: assuming that the engineroom of a gasoline vessel has been closed up for some time without adequate ventilation, would you consider it a safe or prudent thing for anyone to go into the engineroom and throw an electric switch without first ventilating the engineroom?

Mr. Underwood:

If your Honor please, I object to that as a hypothetical question without sufficient facts stated; there is no de-

scription of the boat or the engine room in it, and the time and conditions are not included:

The Court:

Are you directing that to any boat?

Mr. Matteson:

I am directing it generally, if your Honor please.

The Court:

Read the question.

(Preceding question read by the Reporter as above recorded.)

The Court:

The question does not incorporate anything about the presence of gasoline at that time or at any approximate period before.

Mr. Matteson:

I intentionally left out the question of gasoline, if your Honor please.

The Court:

Read the question again.

(Preceding question re-read by the Reporter as above recorded.)

The Court:

I will have to sustain the objection. I think the use of the word "safe" is improper in the question.

Mr. Matteson:

I will amend the question by striking out the word "safe".

The Court:

Do you still make the same objection?

Mr. Underwood:

Yes, the same objection.

The Court:

The objection is overruled.

Q. Answer the question.

The Court:

Read him the question now.

(Thereupon the preceding question was read by the Reporter as above recorded, the word "safe" therein being eliminated in the reading of the question.)

A. Well, if I went aboard a boat and everything was closed up tight I would not think of and I would not want to strike any matches or any lights.

Q. Now the question was about throwing an electric switch.

The Court:

Read the question to him.

(Preceding question again read by the Reporter as above recorded.)

A. I would not.

Q. Will you explain to us why not?

A. Well, you take an electric switch, these knife-switches that are commonly used; sometimes when you throw them on you can see a little bit of an arc, not when the switch is in place and not quite so much of an arc as

when the switch is withdrawn, and if there is any presence of any vapor explosive it is liable to set it off.

Q. Would it make any difference to you whether you actually smelled gasoline or not?

A. If I went into any vessel and didn't smell gasoline I would want to make sure that there was no gasoline because I might have a cold and couldn't smell it, but, as you say, to go into one that is absolutely all closed up, and had been closed up for a matter of days, and put on a switch,—no, I wouldn't do that.

Q. Would the same apply to striking a match?

A. A match is a darned sight worse; excuse me—a match is worse.

Q. Is there any other reason that you can think of why you might not smell gasoline in such a place, although it was present?

A. Of course I am speaking of a gasoline boat, a Diesel driven boat, and not on a sailing vessel or a boat that has gasoline auxiliary—

Q. We are talking about a gasoline boat.

A. On a gasoline boat I would not. That is your question, I believe.

Q. Of course we are all talking about that. The question I put to you was: is there any other reason that you can think of aside from the reason that you have given us to the effect that you might have caught a cold and couldn't smell the gasoline, although it was present?

A. I said I might have a cold and couldn't smell it, and then there is another thing, the quantity of gasoline vapor—it might be down around the floor and up around my head there would not be any, or very little or not enough to be susceptible whereas down there on the floor, near the floor, it would be dense, and it would depend on what kind of gasoline you have. We have had gasoline in the old days, 76, but that has gone—

Q. Now I want to go back to this interview that you had with Mr. John Thomas that you told us about this

morning. Will you tell us about what John Thomas, condition was as you observed it at that time?

A. When we first went into the room he was in bed, of course, with his leg strapped up on the frame, and he was half-sitting up, and he had one of these cheap magazines in his hand, a pulp magazine or whatever you call it—you know, 5, 10, 15 or 20's; I don't know whether it was a True Detective or what that he was looking at, and he laid it down and greeted us, and said "Hello Bill, hello Ben", or something like that, and of course then we got down to asking him in regards to the fire and so forth.

Q. Did he appear to be in pain at the time?

A. No; he appeared to be very cheerful.

Q. Did he appear to be under the influence of narcotics of any kind?

A. No, not the way he talked to us.

Q. Did there appear to be anything the matter with his intelligence or his ability to express himself at that time?

A. No, I have seen people under narcotics and they were very hesitant in their speech, but he came back with his answers very quick, and the fact is that he kind of thought he got a raw deal in getting hurt and nobody else did.

Q. I want to ask you again about your observation with respect to gasoline on the Seminole. At the time that you say you came down there and smelled gasoline from the shore, what observation did you make then as to whether or not the gasoline odor was coming from the Seminole?

A. Well, a slight wind seemed to be in that direction from the Seminole, and she was only boat over there; everything had disappeared under the water; she was the only one afloat—not afloat—I mean sunk—the wooden posts was entirely consumed, and it seemed that the smell came from her, because her tanks stuck up above, and I think the gasoline came out of her vent pipe or



filling pipes; she had a two-inch pipe and a hole in each tank—I don't know the size of that vent pipe that ran across the top; that may have been half-inch—

Q. After observing these conditions you described from the share, then do I understand that you went out to the boat?

A. Yes, because the barge that brought—

Q. You are speaking of the pumping barge?

A. Yes; they brought it up there but I don't think she was located yet.

Q. Now what observation did you make at that time which would tell you whether or not the gasoline which you observed came from the Seminole?

A. Well, I will tell you. We didn't make any particular observation. What we were trying to do was to put out the fire. The smell of gasoline was so acute that we were afraid it would ignite on the surface of the Basin there and would catch some of us while we were walking over to the boat, the Seminole and—

Q. Now when you were on the Seminole at that time, did you observe any other source from which gasoline might come?

A. After she was pumped out?

Q. When you were there on the pumping barge?

A. No, sir; we didn't try to look around because the smell, as I said, was just a strong smell of gasoline and the pump barge had not started pumping yet, and, as I say, most likely it was coming out from these tanks, you know, sticking above the water, the upper ends of them of course would discharge the gas fumes and—

Q. At any time while you were there at that time making these observations with respect to the gasoline on the Seminole which you have told us about, did you observe any other source from which the gasoline might come?

A. No, I didn't.

Q. What was the condition of the rest of the boats in the yard at that time?

A. The one that was five hundred feet westward up the river was the only one—I think she was half submerged, and there was a schooner or two that were pulled out and pushed down the river about a couple hundred feet from where the shed was, or where it would be. I know that smell came from the Seminole, the Seminole alone.

Q. I want to ask you just one more thing about the lay-out of the Blue Lagoon. Do you remember the date that you brought her there?

A. We had been laying down at Fort Lauderdale; we brought her up to Pilkington's on a Friday morning. We drained out the gasoline, as he told us we had to do, as he always required that to be done twenty-four hours before she was put under the shed; that was to allow the engines to cool down. So then on the morning of Saturday—not Saturday—

Q. Which is it; Saturday morning or not?

A. Saturday; it wasn't Saturday morning, because it was just one o'clock in the afternoon of Saturday—his men right after lunch caught hold of the Blue Lagoon by hand and untied the line and moved her into the storage shed, and we helped them perhaps by pushing her and we put her alongside the Seminole. Then as we were through moving out the stuff we wanted to take off, personal luggage and so forth,—we moved that out and put it in the car and then we opened up all the windows, pulled up the floor boards for ventilation down below—we pulled up the floor boards which allowed any breeze to flow through and go right down there through the bilges, which would take out any gasoline odors that might be possible there. When you drain a gasoline tank there is always a lot of smell in a gasoline tank that is explosive and will be there for years, so by lifting

up the boards the breeze could go in there and take away any smell and keep the bilges sweet and clean, take out any gasoline odors.

Q. Who did the work of preparing the boats for storage?

A. My brother and I. Do you mean the Blue Lagoon?

Q. The Blue Lagoon.

A. Brother and I. We drained out the gasoline and carried the gasoline ashore.

Q. You spoke of opening windows, was that done after you got under the shed or before?

A. Well, I will say that we went down, went around, and saw that every window was open.

Q. When was that?

A. When we were in the shed and ready to give the keys to Mr. Pilkington.

Q. What did you do with the keys?

A. Gave the keys to Mr. Pilkington; there was just two keys; no, just one key. You could go through the deckhouse and unlock the screen door from the inside, unhook it—there was only one key and that was given to Pilkington.

Q. You spoke of this boat being put in there on Saturday afternoon.

A. About one o'clock.

Q. When was that with respect to the fire?

A. The fire was the next Monday about one or two o'clock.

Q. You got there just a couple days before that?

A. Oh, yes; just our usual luck, and she wasn't insured.

Mr. Underwood:

That is all.

(Discussion off the record between counsel and witness.)



Mr. Underwood:

I think we can agree that the witness attempted to open the valve marked "Crane 150" and was unable to do so; that he then opened the valve marked Crane 125 and removed the stem and the attachment on either end.

### Re-Direct Examination.

By Mr. Botts:

Q. I will ask you this, Mr. McCoy, is this valve, marked 125 which you opened,—are you able to say from your experience whether or not this type of valve is designed and approved for water or gasoline?

A. I would say it was for water; I wouldn't say it was for gasoline.

Q. Is this type of valve an approved valve for gasoline?

A. No.

Q. Why not?

A. That is just my personal idea and experience. I would say it wasn't suitable for gasoline; it might be all right at the start, and then later on it would wear, or a little piece of dirt or grit might get into it.

Mr. Botts:

I think that is all I want to get from this witness.

(Recess.)

### Cross Examination.

By Mr. Underwood:

Q. Mr. McCoy, what is your idea of a proper valve for gasoline?

A. One they call a plug valve, or approaching to the needle type. When you get one which is flat like that, it takes extreme pressure.

Q. I am sorry, but your finger movements do not show on the record.

A. All right; I will say "acute angle" then.

Q. Do I understand that you say a plug valve is proper?

A. Yes, certain types of plug valve.

Q. Any plug valve would not be proper?

A. No, not any plug valve.

Q. What is the difference between a plug valve that would be proper and one that would be improper, according to your views?

A. Well, what I call a plug valve is a valve that has an extreme—that is acute, not as acute as a needle valve, and pushes down more on the inside of the seat, pushes down more on the inside of the seat than it does on the top flat surface. Now I don't call these valves of the—we will just say ordinary "seat cocks"; I don't call them plug valves.

Q. And you say this particular valve that you opened, Exhibit 11, is not a plug valve, is that right?

A. I would not call that a plug valve, no, because on account of the angle of the part that goes down.

Q. It is a ground seat valve, isn't it?

A. Is that a ground seat?

Q. Yes.

A. Yes, it is a ground seat.

Q. It is not a composition seat, is it?

A. No, I don't think so.

Q. Are you sure?

A. No.

Q. You can't tell from that whether it is a composition seat?

A. Bring it over here and let me scratch it.

Q. All right.

A. Yes, that is just the same.

Q. Is it a ground seat valve?

A. Yes, it is a ground seat valve; they all have to be ground.

Q. Now, Mr. McCoy, I will show you a picture of a valve and will ask you if you will tell me whether this is a plug valve?

A. Yes, I guess that is what they would call a plug valve, but a plug valve to my notion has got more of an angle.

Mr. Underwood:

The portion of the page now being marked, which I showed to the witness, is an outline of the valve at the upper lefthand corner of the page. Mark this for identification.

(Thereupon the paper above referred to was marked Respondents' Exhibit "L" for identification.)

Q. What difference do you see between the valve shown on Respondents' Exhibit "L" and the valve marked Crane 125 that you have just examined?

A. That valve over there has not got the angle that this has; that one over there looks more of rounding.

Q. You mean the angling between the plug and the seat?

A. Correct, right up in here (indicating).

Q. Right?

A. Yes.

Mr. Underwood:

Witness draws two lines upward from the points where the plug and seat contact, and I will make this a little heavier and mark them each "A".

(By Mr. Underwood):

Q. It is your testimony, is it, that the angle between the plug and the seat makes the difference between a proper valve and improper valve, is that right?

A. In one way, yes. What I was going to say is this: that valve seat is no good for gasoline, and the more you get down to the needle valve, which is an acute angle, the better seat you have.

Q. Do you say that this valve marked Crane 125 is a flat seat valve?

A. No, I don't say it is a flat seat valve, but I say to my notion is not—

Q. Do you want to finish your answer; to your notion it doesn't what?

A. It is not a proper valve for gasoline.

Q. I am trying to find out why. We have gotten down to the point where it is a matter of angles.

A. Angles, yes.

Q. Do you say there is not an angle on that plug?

A. Yes, there is an angle there; but not sufficient to my notion.

Q. You think it ought to be a more acute angle, more nearly approaching the vertical?

A. Yes.

Q. How much more?

A. There is another thing here (pointing); do you see that; do you see that defect there?

Q. I see a notch there.

A. That would leak a whole lot.

Q. Do you know when it came there?

A. No.

Q. What angle from the vertical would you say that is?

A. Well, I don't know, to tell you the honest truth, unless—

Q. What angle from the vertical do you say is a proper angle for a gasoline valve?

A. Well, what is the angle of a lead pencil, the ordinary lead pencil point in a sharpener?

Q. What angle do you say is a proper angle for a gasoline valve?

A. The angle of a lead pencil that is sharpened in the ordinary sharpener.

Q. We were down to the point where you say it has to be a needle valve to be proper for gasoline?

A. Not exactly a needle valve; it takes too much bend on a needle valve.

Q. By the way, do you know what the figures mean on these valves, Crane 125 and Crane 150?

A. No, unless they mean something in the nature of a catalog number.

Q. You think it is the model number, perhaps?

A. Yes. Some of them are model numbers and some of them have pressure numbers.

Q. Don't you know as a fact, Mr. McCoy, these figures on there are pressure figures?

A. I haven't looked at those pressure figures; bring it over here and let me look at it.

Q. All right.

A. I thought you were referring to the number up here (indicating); I never looked at these numbers.

Q. Look at it now and tell me what they mean to you?

A. They mean 150 pounds pressure and 125 pounds pressure.

Q. That is what they are built and represented to withstand, is it not; isn't it?

A. Wait a minute—

Q. Isn't it?

A. No.

Q. You say that it is not?

A. It depends on what the valve is designed for; if it is for water it is for 150 pounds pressure of water, but not for 150 pounds pressure of air.

Q. How about steam?

A. Steam?

Q. Yes.



A. I haven't had experience with steam. I know about steam pressure valves to. If you take a 150 pound water pressure valve and you put it under 150 pounds of steam, it is according to what the composition of the seat is, just the same as your hot-water.

Q. Do you know whether that 150 and that 125 are to represent that the valve will hold 150 and 125 pounds of steam?

A. No, I don't know about that.

Q. You don't know whether that is true?

A. No; in regard I wouldn't say.

Q. We are talking about gasoline, aren't we? You made a bargain with Pilkington about the storage of your boat there?

A. My brother made the bargain, so much a foot per day.

Q. Were you present at the time your brother made the bargain?

A. No, I wasn't there; I don't hardly think I was.

Q. Have you talked—

A. My brother may have told me about what the charges were.

Q. Have you talked with Pilkington about what duties he was to perform?

A. Oh, yes; I knew what he was to do.

Q. Tell me what he was to do.

A. Well, he was to deliver the boat at the end of the season in as good condition as he got it; in other words, he was to keep it ventilated; he said he would go over it—he said every day he would go through these boats and see that they are properly ventilated, and that the windows are open, and that no gasoline fumes in them, and no danger of fire.

Q. Did he agree to inspect the boats from time to time?

A. He agreed that he was to go through them every day, and he said—

Q. And he agreed to do that?

A. Yes, sir.

Q. Did he agree to protect them and the property aboard of them from fire?

A. In regard to what now?

Q. Did he agree to protect your boat and the property on board from fire?

A. Did he agree to protect what?

Q. The boats.

A. The boats in the case of a fire?

Q. Did he agree to protect the boat from fire?

A. No, I can't say exactly that he did; he said he would go through and inspect them daily, go through them daily, and to see that they are properly ventilated, and to see that there wasn't any danger of fire. That is what he said—

Q. In other words, he agreed to inspect the boats for possible fire hazards, isn't that correct?

A. Yes, and to see that she wasn't leaking; that was another consideration; leaking of water from the outside. He agreed that if there was anything wrong with the boat he was to look after it, and remedy it; if she leaked he was to call up the shipyard and tow her down there and get her caulked and bring her back in the shed again.

Q. That is one of the things he agreed to do?

A. He told us—that if—he told us that if the boats get to leaking that he had no facilities to haul them out, and that he would haul them out and tow them down the river and bring them back again at our expense.

Q. Those are the things that he agreed to do for the storage price you agreed to pay?

A. No; that would be at our expense; if he saw that anything was wrong with the boat it would be rectified at our expense.

Q. Probably I did not make myself clear to you. Is it the fact that Mr. Pilkington agreed to inspect the boats from time to time?

A. Yes, daily.

Q. Inspect them for fire hazards as a part of his bargain for which you agreed to pay storage?

A. Not in regard to the fire hazards; if he saw that there was something wrong there that we had left and started to smoke, he would check it over—he said that if anything out of the ordinary happened it was to be taken care of at our expense; in regard to fire hazards I would say that exactly.

Q. Let us put it this way: the price that you paid included the right to leave your boat there and to have it inspected by Mr. Pilkington?

A. That is right.

Q. And if he found anything wrong there we would—

A. He would either notify us—if the boat had sunk he would notify us, and if the boat leaked he would call the shipyard and tow her down there and bring her back.

Q. And that included ventilating the boat and inspecting the boat?

A. Yes; and the boat was to be ventilated.

Q. Now when you got your boat there—I think you said the Saturday just before the fire—

A. What?

Q. The Saturday before the fire?

A. No, Friday before the fire.

Q. She was put under the shed?

A. No, she wasn't put under the shed until the next day.

Q. Saturday?

A. Saturday.

Q. When was it that you did whatever you did about getting her ready for storage?

A. Friday and Saturday morning. We didn't run any more engines after we got it to the dock Friday.

Q. Now you said something about draining gasoline out. Tell me what you did.



A. All right. Our gasoline tank was situated on the upper deck right back of the wheel; there was a pipe that went right along on the upper deck—I don't mean on the extreme hurricane deck, but on the upper deck—alongside of the house—and came right down and came across and then came down, and there was three valves on that line. Of course the three valves were open when we run it up there. To draw that gasoline out I disconnected the union where the pipe came into the carburetor.

Q. How did you do that?

A. With a Stillson wrench; just the same as I did right there.

Q. What kind of a line was this that led to the carburetor?

A. It was a three-eighth inch line; three-eighths on deck; from the deck it was galvanized, and down in the engineroom it was copper.

Q. Galvanized pipe on deck?

A. Yes.

Q. Copper pipe below the deck down to the engineroom?

A. Yes.

Q. And down to the carburetor?

A. There was copper; it was copper tubing, three-eighth inch.

Q. What kind of a union was it; how was it disconnected?

A. It was a piece of brass pipe into the carburetor, and a short nipple and a valve, and then a nipple and then this union with an elbow—then this union with the nipple and the elbow hooking up; then this tubing went into that elbow. I think they had a special fitting to be fitted into it.

Q. Is that the fitting that you disconnected or was it some other fitting?

A. No; the fitting right next to the valve.

Q. You did not disconnect the tubing?

A. No; disconnected that pipe right next to the valve.

Q. Where did the tubing begin?

A. Right under the deck.

Q. Below the deckhead?

A. Yes.

Q. What was the character of fitting at that point?

A. Well, that was a—let's see—it would be on the—it would be an elbow going down, and then there would be one of these tube fittings that fit into the tubing, and also fit the female threads.

Q. Was that such a fitting that you could unscrew it with any monkey-wrench?

A. Yes.

Q. Was the fitting fastened on the lower end of the tubing on the pipe that led into the carburetor such a fitting that you could take it apart with a monkey-wrench?

A. Yes, some of those were; whether this particular one was I couldn't say.

Q. What type of carburetor did you have?

A. Schebler.

Q. Do you know what model?

A. I don't know; it was just the ordinary old type Schebler; the top of it was put on with screws, and you could take the top of it off.

Q. Tell me about draining off this gasoline; how did you do it; did you disconnect this fitting near the carburetor?

A. Of course this tubing is flexible, and the carburetor is just about that far off the floor (indicating).

Q. Indicating about eight inches?

A. Yes. Then I could take this tubing and bend it up like that (indicating), and let the gas flow into this can or this here pan that I had, that is, a kettle, one of the cooking pots—then I could hold my hand over it.

Q. Something like the size of—

A. It may have had a handle on it—

Q. How deep was it; what was the diameter of it?

A. Come to think of it, I know it was one we had for boiling ham and cabbage in and I remember it set up about that high (indicating).

Q. Making it about ten or twelve inches, we will say?

A. Not that much.

Q. About eight inches?

A. About nine inches, we will say; I would say it was about 12 by 14 inches in diameter.

Q. Then you got a pan full of that and—

A. Not entirely full; about three-quarters full, and then we would have a gasoline can alongside with a funnel setting in it—

Q. What did you do with the end of the pipe when you got the can as full as you wanted it?

A. Just put my finger right over it.

Q. Stopped it with your finger?

A. Yes.

Q. And then you poured the contents of the pan into—

A. Into the can—a five-gallon can.

Q. Through a funnel?

A. Yes.

Q. Then what did you do?

A. When the can got full?

Q. Yes.

A. I would either take it ashore or Bill would take it ashore; as a rule Bill would take the can ashore.

Q. On this occasion did you stand there and hold your finger over the end of the pipe until your brother took the can ashore?

A. How long would that take?

Q. I am not criticising you; I am just asking you what you did.

A. I know. I don't know what I did on this particular occasion, but sometimes I would carry the can ashore, or maybe I would have another can alongside there and would shove it right over there. We had on that boat ten five-gallon water bottles, glass; we had six five-gallon cans empty, the ordinary tin cans, you know what they are, with wooden jackets on them.

Q. All right.

A. Now I could draw out generally all of the gasoline that was in the tanks, because we wouldn't put much in; perhaps down at Fort Lauderdale I would measure the gasoline in the tanks and find out how much I had; I might take a five-gallon can and dump it in there to be sure we had enough to get up there. One time when we went up there we only drew out about ten gallons because—

Q. Have you told me the method by which you ordinarily emptied your tanks of gasoline?

A. That was the ordinary method, yes.

Q. Did you ordinarily do that?

A. Ordinarily did that, yes. It was only a step to the valve over there, and I couldn't step over there and shut the valve off while this gas was running into the pan.

Q. Now I think you said that you put what you got in the tank of your automobile?

A. We did.

Q. And drove away and came back on some other occasion?

A. No.

Q. And got the balance. Am I wrong about that?

A. Yes, that is wrong, because when we went out with that gasoline we were bound north, and we took all of the gasoline with us, because we were not going to give it to Old Pilkington, and he had no place to store it, so if we did leave it there it was our loss.

Q. I understood you to say on direct examination that you took what you could and then you came back?

A. We took it and put it in the car; on one occasion we put in about fifteen gallons of gas, put it in the car, and we had another can which we filled up and another can part full; if you want to get right down to exact, we took about twenty-two and one-half gallons or possibly twenty-five gallons, took that much along with us. We carried the cans along with us, and as we emptied the cans we would throw them alongside the road.

Q. Did you say this morning that you on one occasion at least put what gas you could in the car, and not being able to take any more, left some in the tanks of the boat and came back another day and got the rest of it out?

A. No, I didn't; if anybody got that down that way he is crooked.

Q. Was that the only method of getting gasoline out of the tanks on your boat?

A. That was the only method, because we had no pump small enough to go into the hole, and if we did pump that tank empty as far as we could, there would still be gas which would seep and drain over to where the discharge was, where that valve was. Now if we had attempted to pump out the gasoline line, that half-inch line along there on deck and then the three-eighth inch line into the engine room would have been full of gasoline, which would have been hazardous, just the same as if it kept on leaking or had leaked; so that's the reason we emptied it right down there; that was the easiest place to do it, do it by gravity.

Q. It was your practice to do it that way?

A. Yes. The boat was outside of the shed, you understand; it had not been put under the shed, in the storage shed, yet, but it was laying at the wharf there, and everything was fully ventilated, and no fires.



Q. Just what type of boat was the Blue Lagoon?

A. Well, she is called a house-boat, 52 feet long and 16 feet wide, having a deck-house about 18 feet long.

Q. How many persons could it accommodate?

A. Well, we did have once—do you mean to sleep or what?

Q. Yes, to sleep.

A. Well, actually she had only four berths; that would be four people.

Q. What boats did she carry?

A. You say what is the most she carried?

Q. No. What boats did she carry?

A. She didn't carry any boats; we towed it behind us.

Q. What kind of a boat was it that you towed behind you?

A. A row boat, about 16 feet long.

Q. How big was your engineroom?

A. It was the full width of the boat, excepting what was taken up for the bathroom; the bath room was about 8 by 5.

Q. The bathroom occupied one corner of the engine room?

A. Yes, on the starboard side.

Q. What was the fore and aft dimension of the engineroom?

A. I would say about 16 feet.

Q. How many motors did she have?

A. One Palmer, 36 H. P. gasoline motor, four cylinders, 6-3/8" by 8.

Q. Did you have windows in the engineroom?

A. We had one, two, three, four—we had on the starboard side—no, on the port side—we had three windows that were approximately two feet by two feet; then in the bathroom there were two windows two feet by two feet.

Q. Did the bathroom have a window into the engineroom?



A. No, sir. There was about that much (indicating) from the top of the door and about that much (indicating) from the bottom of the door for ventilation to go through.

Q. About eight inches at the top and about four inches at the bottom?

A. Yes.

Q. All right.

A. There was a window on the deck end looking over the after deck, and a screen door; that was just a screen door; it wasn't what you would call a door, because we had a piece of celotex that we would put up there in case of cold air coming in.

Q. It wasn't a solid door?

A. No.

Q. That is the door that led into the after end of your engineroom?

A. Yes.

Q. And what windows did you have on the starboard side?

A. Two in the bathroom and one on the extreme after end of the—

Q. Of the starboard wheel?

A. Yes, and then another one, as I said, about amidships looking over the after deck, and then this screen door; so we had plenty of ventilation there.

Q. Did you have any ventilators?

A. We didn't.

Q. What was the draft of your vessel?

A. Twenty inches.

Q. The engineroom was below the main deck, was it?

A. Yes.

Q. From the after deck you went into the door and down some steps?

A. Yes.

Q. How far above the bilge was the engineroom floor amidships?

A. Amidships?

Q. Yes.

A. About one foot. I cleaned that out many times, so I know.

Q. And that distance reduced to zero as you approached the sides?

A. Oh, yes.

Q. And that is the ventilation you had in your engineroom?

A. Well, you can't call that all the ventilation we had. That was all open at the forward end under the floor; the floor stopped where the forward deck begun; the floor stopped where the after deck begun, that is, up on top.

Q. You mean there was no bulkhead forward of the engineroom that went down to the skin of the ship?

A. No.

Q. And there was none such aft the engineroom?

A. No.

Q. The bilges were open throughout?

A. Yes, from one end to the other.

Q. You have told me now about all of the ventilation the engineroom had.

A. Of course, there was a pasageway up forward, and there were two windows, and when we laid at anchor the wind could blow right in there; some of it would blow underneath that forward deck and go right down and go underneath that floor all the way to the after end, and sometimes it would reverse itself.

Q. Now have you told me about all of the ventilation?

A. Well, now, come to think about it, there was a stairway just at the forward end of the engineroom; there was a passageway about six feet long, and then this stairway went up into the deckhouse. We had a deckhouse there, as I say, about eighteen feet long.

Q. You mean that had windows and the wind could go in and out?

A. Yes.

Q. Anything else?

A. That is about all. The fact is that she was ventilated. There was no doors on these stairs or passageway at the after end to shut off anything.

Q. Now on the night of the fire, as I understand your testimony, you were at Mr. Pilkington's house under the back porch taking refuge from the heavy storm, is that right?

A. The night of the fire?

Q. The night following the fire, Tuesday night.

A. Yes. We had taken refuge there to get away from the heavy rain.

Q. Was that on the side of the house nearest to the Basin or farther away from the Basin?

A. The Basin was up and down the river and the house runs up and down the river and this porch is on the—I don't think it would be—I think it would be athwart-ships of the river.

Q. Could you see the Basin from this porch where you were?

A. I could if I went to one end of the porch.

Q. But it was on the porch that you first observed the odor of gasoline?

A. No.

Q. Isn't that what you told us?

A. No. I smelled gasoline—we smelled gasoline out there on the bank. I should say that the house sets back from the basin about twenty-five feet, maybe more; the house would be twenty-five or thirty feet back, and we were standing out there on the ground next to where the boat was—I mean where the boat shed had been, and we could smell that gasoline.

Q. I don't understand where you were standing when you first smelled the gasoline. Were you back beyond where the shed had been, upstream, so to speak?

A. No, no; we were standing about abreast of the Seminole, because she was the only object above water that we could recognize; all of the other boats were burned and out of the way.

Q. Were you nearer to the shed than to Pilkington's house or were you farther away from it when you first smelled the gasoline?

A. We were nearer the shed, nearer what had been the shed. The upright poles which had been holding the roof were right close up against the shore, and we were within about, I would guess, ten feet of those poles that held the shed up.

Q. You smelled gasoline there?

A. Yes.

Q. And that was the first time you smelled it?

A. Yes.

Q. And then it came on a rain and you went to Pilkington's porch, is that right?

A. From the time that we had been there—I don't know how long it was before the time we stood there and smelled the gasoline, but we went out on the porch; no, we went out to the boats and it came on the rain, so we left; we were out to the Seminole and it came on the rain, so we left there and went back; in the meantime, before the rain, we had attempted to put out these fires on top of these poles.

Q. Just tell me whether I am right or wrong. I made a note of your testimony when you testified this morning, and according to my notes you said that at seven o'clock in the evening you noticed the smell of gasoline when you were at Pilkington's on the porch; is that right or is that wrong?

A. That is wrong.

Q. Did you smell gasoline when you were at Pilkington's on the porch?

A. Yes, we did.

Q. But you had smelled it before then?

A. Yes.

Q. Was there a general odor of gasoline all around the place?

A. There was a general odor of gasoline, and if I remember right there was a slight wind blowing from the Seminole.

Q. Was there a general odor of gasoline all around the place?

A. No, not after you got way back, but there was right over at the river bank.

Q. All around the shed or all around what had been the shed?

A. Yes.

Q. And around Pilkington's house?

A. Yes, we got a "whif" of it once in a while on Pilkington's back porch.

Q. Do you know whether any of the other boats that had been stored there had gasoline in them or not?

A. I don't know, excepting one, and that had—that was the Seminole.

Q. Now after the rain stopped you went out to the Seminole and were on the float where the pump was, is that right?

A. We went out to the Seminole, these fellows that were there, and some of them stood out there in the rain.

Q. I think we can shorten this if you will try to answer my questions.

A. I will try to do the best I can.

Q. I want to get through with you if possible earlier than five o'clock, if I can.

A. All right.



Q. After you left the house when the rain stopped where did you go; to the Seminole?

A. To the Seminole.

Q. And you climbed around her?

A. Yes, and also on the pumping barge.

Q. About what time of night was that?

A. Oh, I should say that was about—you mean after the rain had stopped—I should say it was nine o'clock; it might have been ten o'clock, and it may have been eight or about nine.

Q. What source of light did you have when you climbed around the Seminole?

A. Well, there was some car that was driven down there and the flash of its headlights was out there, and it seems to me—I don't know—that Pilkington gave us some out there with a cable; I think we run an electric light cable over there; I don't know whether Pilkington had a gasoline generating plant or not, but we had some electric line, and we also had the light of this car; as a matter of fact, I think it was two cars that came right along there and fixed their lights and shown them out there.

Q. Did you have any light on board the Seminole?

A. We had some electric line from somewhere; I never gave it much thought, but it seems to me that there was a cable run over there.

Q. I would like for you to be reasonably sure about that. Are you sure you had lights on the Seminole at the time the pumping was going on?

A. We had some—well, I am not sure of that either—because the lights from these cars threw the light out there, and I know there was a half dozen flashlights in use among the different people.

Q. On the Seminole?

A. On the Seminole and on the barge and so forth. You must understand that the Seminole was still under water.



Q. What part of her were you climbing around?

A. You see she had a steel hull.

Q. Just what part of her were you climbing around?

A. I might say the upper part of her ribs, going from one to the other.

Q. You say you saw this spring of gasoline?

A. I did; I discovered it.

Q. Where was the spring?

A. Oh, I should say it was about amidships between the bulkhead and the two engines.

Q. Where was it fore and aft?

A. About two feet from the forward bulkhead.

Q. How much water was there in the Seminole at that time?

A. As I said before, I think it was somewhere around four feet.

Q. Four feet of water in her at that time?

A. I think so.

Q. You were not down in the engineroom then?

A. Oh, I might say—

Q. Were you down in the engineroom then?

A. I wasn't down on the engineroom floor, no, because I was standing on some of the old machinery that was laying there, perhaps a generator—

Q. Were you within the engineroom compartment when you saw this spring?

A. Yes.

Q. What were you standing on?

A. Standing on one of these old generators that was burned up.

Q. Do you know where it was?

A. Over on the port side.

Q. Ahead of the windows?

A. There wasn't any windows.

Q. You could tell by the spacing of the frames where the windows had been?

A. No; I remember these frames; they were all about the same distance.

Q. You were standing on this auxiliary generator and saw this spring; right?

A. Well, there may have been something laying on top of the auxiliary, some of the old stuff laying down on top of it.

Q. I am trying to visualize myself what it was you saw, in the first place; how high was the water in the engineroom with reference to the place where you were standing?

A. I think it was down below my feet, I would say, about two feet; I don't know; it may have been only 18 inches.

Q. Could you come close to indicating the level of the water in the engineroom at that time from a picture of the forward bulkhead?

A. I think the water, according to that coal hole—I think it was just about level with that coal hole; that is what I think it was.

Q. You are telling me your best thought on that subject?

A. Yes.

Q. That is as close as you can come under the circumstances; right?

A. That is about it; I am not positive of that, though.

Q. There were no waves in there?

A. Absolutely none.

Q. It was just a flat surface of water?

A. Yes.

Q. Now you say you saw a spring. How high above that flat surface of water did this spring come?

A. Oh, that spring was—it wasn't exactly bubbling up, but it had a little bit of a crown to it, and it levelled off; it may have been, I believe, about six or eight inches in diameter; if you want to come right down to the

crown of it, I would say the crown was perhaps a half inch high.

Q. Above the flat surface of the water?

A. Yes; it seemed to be about that high.

Q. Was that a constant or continuous thing?

A. Yes.

Q. Was it apparently a viscous substance?

A. No.

Q. Was there any difference between its color and the rest of the water around it?

A. There wasn't much difference in regard to the color.

Q. Did it bubble?

A. No, it didn't bubble.

Q. Just a smooth—

A. Just smooth—it would kind of roll like that, you know, and you could get a different kind of reflection on it.

Q. Sort of like you pour molasses?

A. No; molasses is slow in comparison with gasoline flowing.

Q. Did you see any pipe from which that came?

A. No; I didn't investigate because I had on what might be called dry clothes, and I didn't feel like going down into the water, but this fellow Lowney was below me, and his head only came up to about here (indicating).

Mr. Matteson:

Indicating his waist.

(By Mr. Underwood):

Q. You say you saw a solid bubble. What do you mean by that?

A. Well, a bubble has got air in it, but this stuff would come up; you wouldn't call it a solid bubble; you might call it a gob.

Q. Would it float?

A. Yes, it floated off to one side and gradually disappeared.

Q. You saw how many of these springs?

A. I only saw that one myself, but I want to say this much—

Q. We will come to that later on.

A. Gasoline covered the whole darned place in there.

Q. Now just how did you reach the conclusion that it was gasoline. You have said nothing about putting your finger in it or tasting it; you didn't do that, did you?

A. No, because I had a nose and I could smell it. Do you want to know what I said to this other fellow?

Q. I didn't ask you that.

A. All right.

Q. You smelled it?

A. Yes, I smelled it—smelled gasoline.

Q. You didn't taste it?

A. But I says it is gasoline—

Q. You mean you now say it was gasoline?

A. No, I said it before.

Mr. Underwood:

I move to strike that out.

The Witness:

That is what I said to him.

Mr. Underwood:

I move to strike that, if your Honor please. I haven't asked the witness what he said to anybody.

The Court:

The motion is granted.

(By Mr. Underwood):

Q. Let me make sure I am right: this place where you saw this spring was midway between the two motors, is that right?

A. About midway but it may have been a little more to the port side as I said.

Q. Did you observe the remains of the controls by which the motors were operated?

A. No I did not.

Q. Did you observe the remains of the telegraphs?

A. No.

Q. You know where the forward end of the motors was?

A. Yes.

Q. Was that about on a line between—

A. That this spring was?

Q. Yes.

A. Well it was about half way between the line; draw a line right across there and it would be about half way between there and the forward bulkhead, of the engineroom; I think it was a little to port of amidships where the spring was coming up.

Q. How long did you watch that spring?

A. Oh, I looked at it about two or three minutes.

Q. Did you observe it when you first went there?

A. When I first stepped into what would be the engineroom?

Q. Yes.

A. No, because I was looking back around, and Lowney incidentally flashed his flashlight around like that (indicating), and we were looking for leaks in the side of the vessel, and he flashed his light there, and I saw it then and there.

Q. You don't know how long it had been in operation before that?

A. No.

Q. You looked at it two or three minutes, is that right?

A. Wait a minute. I didn't stand and look at it two or three minutes, or anything like that; I just gave it a glance and ascertained that it was gasoline, but I didn't verify it by tasting it.

Q. You smelled it?

A. I smelled it. Other people tasted it and verified it—

Q. You cannot tell us what other people thought. Do you understand that?

A. All right.

Q. In about three minutes after you first saw it you left?

A. I wasn't looking at the spring all of this time; I called the other fellows over and I says—

Q. Don't tell us what you said to them.

A. All right.

Q. You left there in about three minutes after you first saw it, is that right?

A. Yes.

Q. You didn't see it again?

A. Let me see now—

Q. You say you smelled it and you went ashore, is that right?

A. Not immediately; I called my brother and told him to get out of there.

Q. You went over on the barge first?

A. I think he was over on the barge.

Q. You left the Seminole and went over on the barge?

A. Yes, and came back.

Q. Came back where?

A. We had to pass by this spring then to get on this row boat.

Q. You didn't have to go through the engineroom to get on the row boat, did you?



A. No. I don't know just how we got across there, but I remember we observed the spring again.

Q. Do you remember what was above your head when you were standing in the engineroom, if anything?

A. Nothing.

Q. You mean that the roof of the engineroom had been blown away?

A. It wasn't there over my head.

Q. You mean it wasn't there at all?

A. Not at all, not over our side.

Q. What do you mean by "our side"?

A. On the port side where I was standing.

Q. Was there any roof left on the engineroom at all?

A. It didn't seem to me that there was; still again, it looks to me as if there might have been; I don't know, to tell you the truth.

Q. You saw the spring and you went from the spring over to the barge, and then you went back across the Seminole?

A. Across the Seminole and took one glance at the spring, and there was more of it up there.

Q. You mean it was higher than the flat surface of the water?

A. Yes, it was higher.

Q. How high was it at that time?

A. Well, by that time—in the meantime the pumping—

Q. How high was it above the surface of the water at that time?

A. Just enough to be a little noticeable; perhaps another one-eighth of an inch.

Q. I want you to tell me—

A. Well, it was flowing a little faster; that's all.

Q. A little higher?

A. Yes.

Q. Was it as much as half an inch?

A. Just about the same as it was, but it was a little stronger than what it had been.

Q. A little higher above the flat surface of the water?

A. There wasn't so much surface of the water then; a lot of it was then gasoline.

Q. The surface of the liquid in the bottom of the boat?

A. Yes, gasoline—

Q. And that was coming up?

A. Yes.

Q. How far above the surface did it come this second time?

A. Possibly half an inch.

Q. You looked at that for a moment?

A. Just glanced at it.

Q. And kept on going?

A. Yes, because we were afraid we would catch fire and I would not be here.

Q. What is your estimate of how much gasoline came up out of there?

A. I have no estimate.

Q. You made an estimate this morning.

A. Maybe I did this morning.

Q. You have no estimate as to how much came out of the spring?

A. No.

Q. You would not hazard a guess about that?

A. No.

Q. You are willing to make an estimate as to how much was pumped out by the pump, are you?

A. Well, just generally; of course the pump was running about half—

Q. Do you know the size of the pump?

A. I think it was around about a four or six inch pump; not over six inches, and not less than four; it was more likely four inches, and that seemed to be running about half or three-quarters—

Q. You mean half or three-quarters speed?

A. About half or three-quarters discharge on the discharge.

Q. How fast was it running?

A. I don't know.

Q. What is the capacity of the pump?

A. I don't know; I just gave it one glance and that was all.

Q. You have estimated how much gasoline that pump pumped out?

A. I estimated it that gasoline was all over the place, and I said it was a considerable quantity.

Q. You made an estimate of how much gasoline that pump pumped out, haven't you?

A. When you get down to estimating, that is something else. When you estimate you take a pad and pencil and figure the exact—

Q. That is not what you did, is it?

A. You mean did I guess?

Q. Was it a guess?

A. It was a guess, yes, but because an estimation is something you have to figure exact; you are supposed to take how much the pump is discharging per minute and you are supposed to—

Q. When you said "hundreds of gallons" that was a guess?

A. That was a guess, absolutely a guess, but I can say that there was most likely hundreds of gallons.

Q. Is that an estimate or guess?

A. Guess.

Q. Did you help rig that pump up?

A. No; the whole thing came right up there on the barge complete; all they had to do was to throw the suction connection into the Seminole, I understand.

Q. Where did the suction lead to?

A. To tell you the truth, I don't know, but I imagine it was about amidships just forward of the engineroom on the starboard side.

Q. On another day I think you said—I think you said on the following day you were down there and put your head through that little hole that leads into the former tank space and looked up.

A. I think that was the same day.

Q. The same day?

A. Yes. And there was the smell of gasoline all around there and everything.

Q. Did you observe any pans under those gasoline tanks?

A. No.

Q. Do you say there were no pans?

A. There were no pans, because I could see, getting down like this and looking right up—I could see the bottoms of the tanks resting on this angle-iron framework, and there was no pans that were setting under there.

Q. By putting your head through that opening you could see the bottom of all four tanks?

A. Not in one glance.

Q. But there wasn't anything between your head and the tanks except this framework; is that what you said?

A. What framework?

Q. On which the tanks rested.

A. It looked like a lot of stuff; I didn't want to dirty my clothes crawling in there.

Q. You are sure you observed no pans?

A. Absolutely no pans.

Q. Your eyesight is good?

A. Pretty good when I have glasses on.

Q. Did you have glasses on at that time?

A. Absolutely.

Q. Did you have plenty of light to see by?

A. Of course; there was plenty of light; there was light that filtered in around the tanks and light from the holes and so forth; most of the light would come down around the tanks and you could look in there. I

could see this angle-iron sitting there; I don't know the size of that.

Q. You are very definite about there being no pans there?

A. Absolutely definite.

Q. By the way, you have spoken about operating a boatyard; I wish you would tell me what type boatyard you operated.

A. That was in Holly Hill, between Daytona and Ormond.

Q. What kind of a yard was it?

A. The yard itself really didn't exist—

Q. Did you have a dry-dock?

A. Yes; we had what you call a screw dock, a screw about ten feet long connected to a beam 12 by 12, one at each end, and then we had a wrench that we took a half turn with, and then we would go to the next one and take half a turn, and go to the next one and take a complete turn, and so we would finally get our boats above the level of the water.

Q. Did you build any boats there?

A. Brother and I built boats; from 110 feet down.

Q. I show you Exhibit 6 which was shown to you this morning. Do you know when that picture was taken?

A. I don't know anything about that one; I don't seem to recognize it, excepting that it was the top of the tanks. Did you say "when"?

Q. Counsel have agreed that this was taken in December, 1938.

A. Of course I just saw the Seminole this morning for the first time since the fire.

Q. Do you recollect that you observed the position of the tanks in the Seminole on the night they were doing the pumping?

A. No, but on the following day—when they were pumped out—I could get right down underneath them practically, and you could look underneath the tanks.



Q. That is the time you put your head through that little bunker hole?

A. Yes.

Q. Do you know when these tanks got displaced?

A. The first day after the fire one of them was displaced like that.

Q. And that is when you saw it?

A. Yes, that is the way it was when I saw it.

Mr. Underwood:

Indicating No. 2 tank, the second tank from the port side.

A. If I remember rightly, when I took a picture of her these tanks were not sitting there; I mean—

Q. Getting back to this pumping: when you saw the discharge the first time was there plenty of gasoline in it?

A. No, it was solid water.

Q. When did you notice that gasoline was coming out?

A. When it had gotten down, I would say, about half way; they were still going around stopping up these leaks in her.

Q. How much water was there—how much liquid would you say there was in the Seminole when you first saw gasoline coming out of the discharge of the pump?

A. It was before we discovered the spring, and I should say,—oh, I don't know—the water was about half way down; in other words, they had been pumping about an hour and a half.

Q. Had the tops of the motors appeared yet when you first saw gasoline coming out of the discharge?

A. Yes.

Q. How far were they above this liquid when you saw the gasoline first coming out of this pump discharge?

A. Of course, I didn't make any—she was starting to raise a little off the bottom.



Q. About how much was there in her?

A. How much was there in the boat?

A. (Q.) Yes.

A. I can't say exactly—come to think of it now—when I saw that gasoline spring.

Q. We have got that fairly well fixed.

A. Oh, you have got that all fixed?

Q. I am interested now in how much there was in her when you first saw gasoline coming out of the pump discharge.

A. Well, they must have pumped fully half an hour after I first noticed the gasoline, the gasoline spring; maybe one hour.

Q. Would you say there was six feet of water in her when you first noticed gasoline in the discharge from the pump?

A. Of course I had no method of measuring it; I didn't have any measuring tape, or anything like that, but just judging—I never thought of anything like that.

Q. Do you remember seeing the valves on the tanks?

A. They were not above water yet.

Q. They were not yet visible?

A. No, they were not visible at all.

Q. Do you remember the bracket that set on the bulkhead in the forward end of the engineroom on the port side; I think there were two such brackets—were they noticeable?

A. No, they were not showing yet.

Q. They were still under water?

A. Still under.

Q. At the time when you first saw gasoline coming out?

A. Coming out of the discharge pipe?

Q. Yes.

A. Well, I was thinking about other things afterwards; well, I think it was about half an hour before we found the spring.

Q. According to your best recollection, as I understand you, when you first saw gasoline coming out of the discharge—

A. There was such an awful light; there was some dirt and then there was—

Q. What I am trying to fix is the height of the water in the engine room when you first noticed gasoline coming out of the discharge; do you understand that?

A. Yes.

Q. Had these brackets come into view yet?

A. Well, I think about four feet of water. In regard to the spring I really don't know what I am gauging it by. I didn't go down to the keel; I don't know how deep the keel was, but I said six or seven feet; I don't know exactly. I will tell you where the spring was.

Q. I am not talking about the spring any more.

A. All right, we will come back to the discharge.

Q. All right.

A. I would say there was quite a lot of water in there.

Q. Could you tell me how far below the steel side of the boat the water was when you first saw gasoline coming out of the discharge?

A. It seemed to me it was about two or three feet; that is about what I would judge.

Q. How many nurses did you see in Thomas' house when you were there and had your conversation with him?

A. Up there?

Q. Yes.

A. Why, I think there was one nurse, and then his wife came in, that is, in maybe a half an hour or a quarter of an hour—well, I don't know whether the nurse stayed or whether she went out; I think most likely she went out, but Mrs. Thomas stayed.

Q. Did you ever have any medical training?

A. Me?

Q. Yes.

A. No.

Mr. Matteson:

You spoke of a conversation at "Thomas' house". The one Mr. McCoy talked about, was in the hospital, I believe.

Mr. Underwood:

You are right.

(By Mr. Underwood):

Q. Your conversation with Thomas was in the hospital?

A. Yes.

Q. I did not mean to mislead you. I did say "house". You understood I was talking about the conversation in the hospital?

A. That is the way I understood it. You asked me how many nurses?

Q. Yes.

A. That is correct.

Q. Now you have talked about a piece of pipe and fittings that were shown to you this morning?

A. Yes, sir.

Q. And you said something about the connections.

A. All right.

Q. As I understand it, Mr. McCoy, your objection to that is that vibration may ultimately cause them to leak, is that right?

A. That is right. I have had it to occur, break off at the connection.

Q. You mean they would break right off?

A. Break right off. I don't mean they would break off all at once, but if the vibration continued ultimately they would break off.

Q. And you know that vibrations, of course, depends on the metal and the kind of vibration—

A. Yes.

Q. And a great many other things?

A. That is right.

Q. Of course you have seen a great many boats that were piped with brass pipe and fittings, haven't you?

A. I have.

Q. And this copper tubing is something a little bit recent, isn't it?

A. Well, I don't know when I first saw it used; on the Sagatti we used a flexible woven pipe.

Q. You don't use that any more?

A. No, but that was used to get away from vibration there; finally we put on this copper tubing and it would spring up and down.

Q. Of course copper tubing will vibrate, won't it?

A. Yes, but it has coils to neutralize it, or whatever it is; the vibration will strike it and it will spring up and down, but it doesn't throw the vibration right up against the fitting.

Q. The effect of the vibration depends in part upon how well the pipe is supported, does it not?

A. Yes, and what it is attached to. Right along here (indicating) you have to have supports. If you have something like an engine bumping up and down on a Ford automobile you have to make some proviso for absorbing that vibration up next to these coils.

Q. That is the primary thing with tubing, isn't it?

A. The primary thing is with regards to vibration and tight joints.

Q. On your boat, the Blue Lagoon, you didn't have tight joints on the tubing?

A. How did you know we didn't?

Q. You told me that you could unscrew or disconnect both of them with a—

A. With a monkey wrench; that is correct.

Q. Those were not sweat joints?

A. No; they were set up tight.

Q. In other words, a joint that you set up tight is all right?

A. It is, according to what it is.

Q. A joint with a brass pipe, if set up tight, is all right?

A. Whatever it is, it is all right.

Q. Isn't it?

A. Wait a minute; there is always a qualifying matter; it is, according to how much vibration that is put to it. It will be tight after you run it a week, and perhaps it may not be.

Q. And it may be five years that it will be tight?

A. Five years?

Q. Or maybe ten years?

A. Yes.

Q. Or maybe twenty?

A. Or maybe a hundred.

Q. You don't know, is that right?

A. No; it depends on the amount of vibration.

Q. In other words, it depends on the amount of vibration; I might take one and put it in there and it might last six months, and it might last longer; it depends on how long the vibration continues.

Q. Then your testimony, as I understand it, is that vibration, is sufficiently long continued, will cause the pipe to break off at the fittings?

A. That is right, more or less at the fittings.

Q. You mean fatigue occurs and it breaks?

A. That is right.

Q. Now you say that in gasoline tanks there is always a certain amount of fluid that goes in with the air and gets into the space on the bottom, is that correct?



A. Correct, and I have been told by gasoline men—

Q. I am sorry, but you cannot tell what you have been told.

A. All right.

Q. Of course if you have your discharge valve from the tank at the very bottom that water will flow out into the line into the carburetor, is that right?

A. Wait a minute—

Q. Is that right?

A. No.

Q. Let me put my question—

A. You might have a strainer put in there; you might put a strainer in there, or whatever you call it, something like a catch basin, and the gasoline will come on, and the water will drop into this catch basin, and the gasoline in the meantime goes over to the carburetor, and every once in a while you have to open this catch basin and take out the water mixed in it.

Q. How often do you do that operation?

A. Well, on a boat you ought to do that at the beginning of every run.

Q. Do you do it during the run or does that depend on the amount of gasoline you get?

A. No, but always at the start of the run you would always do that, to get the water out which had dropped into this catch basin.

Q. Do you say that the result of that water going in such a tank with a draw-off valve above the bottom would be to have rust in the tank?

A. It would set there and finally rust. We had a tank similar to the Seminole's, only smaller, a riveted galvanized tank; we had it setting on the "Eagle", and we would put gasoline in there, and we had the draw-off valve down just about level with the crown of the convex head, and that tank ran four or five years and finally it started leaking down around the bottom, and

it was simply from the water, some salt water had gotten in there and caused corrosion down below, and when it started to leak we had to throw it away.

Q. Do you say water corrodes galvanized iron?

A. Salt water will do it, yes.

Q. Do you say that fresh water corrodes galvanized iron?

A. If the fresh water—now, you understand there is a lot of other stuff going in there; that water has been laying in the gasoline—

Q. What water?

A. Any kind of water. Fresh water will go in there and when it condenses and so forth it is filtered through your gasoline.

Q. That is bound to be fresh water, is it?

A. It is not fresh water after it goes through the gasoline.

Q. It is not bound to be salt water, is that right?

A. There may be some salt water getting into it somewhere. Now, you understand that one of the ingredients of gasoline is sulphuric acid.

Q. Which gasoline?

A. Any gasoline.

Q. Are you a refiner?

A. No, but according to what I have read—

Q. Let's come back to what you know.

A. I know this much, that we had a tank—

Q. You said on direct examination that you are going to get water in the tank—

Generally—

Q. Do you say that will rust the inside of galvanized gasoline tanks?

A. What in the world makes them rust if—

Q. I am asking you; is that what you say?

A. Yes, that is what I say, because some of the water has got to be contaminated with some of these acids or something that is in the—

Q. In the gasoline?

A. In the gasoline. Now, you take water and run it through gasoline and it is not fresh water any more; it has absorbed something, and it lays down there with dirt and everything else.

Q. Of course, you don't know what the Seminole's tanks had in them, do you?

A. In what?

Q. In the Seminole; whether it had any water in its tanks or not?

A. No; I am not absolutely sure; but I would say there was water down in them.

Q. In other words, you would guess there was water in there, like you did guess about the several hundred gallons of gasoline?

A. Yes, because it stands to reason.

Q. I don't want you to reason with me. I want you to please answer my questions: On the Blue Lagoon when you laid her up I think you said you took out the floor boards?

A. We did.

Q. What was the reason for that?

A. Ventilation.

Q. Do you mean to say that the breeze that would flow through the windows would go down into the bilges?

A. Certainly would.

Q. How do you explain that?

A. Let me explain to you, another thing.

Q. Tell me that first, please.

A. All right. How would it get there; how would it blow—

Q. Yes, when she is laid up at Pilkington's.

A. You would lay down there, and you could feel the breeze that came along from the other side; it doesn't go in all at one time, you know—

Q. I want to find this out first: you mean to say that that was adequate ventilation for the Blue Lagoon's bilges.

to let the breeze blow in the windows and that it would go down into the bilges, do you?

A. Wait a minute; not too fast; we had additional ventilations. Up here was the engineroom (indicating), and this is up forward (indicating); and this (pointing) was where we had the wheel, with the ropes for the wheel; these ropes came down here (indicating) and extended from that point on down here; the ropes came down here to the floor, and the floor was cut out, and the steering wheel was about this high (indicating).

Mr. Underwood:

That is all.

#### Re-Direct Examination.

By Mr. Matteson:

Q. About how high was this rope that you spoke of?

A. That was just about the height of this box. Now, what I am getting at is this; that here (indicating) is a box about 20 inches by 16 inches—

Q. What was in the box?

A. Simply the wheel ropes and that was down, went down to the floor, and the floor was open, and it was also open into the forward bulkhead of the Blue Lagoon.

Q. You mean these wheel ropes went through a shaft?

A. Yes.

Q. Where was the shaft?

A. About the height of the window sills; now we had a removable hatch on top of this steering box, and when we took that box and set it up the draft would come in there and blow into our bilge forward, and then right back, while she was laying still; if the wind was from the bow it was setting up just like that (indicating).

Q. Going back to the engineroom?

A. Well, it would carry right on through because there was a passageway 28 inches high and six feet high that

was right there, and that ventilated the engineroom and ventilated the after deck; in other words, there were two holes in the after deck, one was 2 by 3 and the other one 30 by 30.

Q. The after bulkhead of what?

A. The Blue Lagoon.

Q. And whatever breeze goes down there goes down into the bilges and dissipates anything that might be down there?

A. Yes, in addition to our wheel box up forward.

Q. You think that was a help too?

A. Absolutely.

Q. Have you had much experience with knife switches?

A. Well, I can't say that I have had much. We have had knife switches at different times.

Q. You have told me there is a little bit of an arc at some switches.

A. Yes.

Q. But you never had experience enough with knife switches to know about that?

A. Yes; we had one on the Siesta.

Q. When does a knife switch arc?

A. Sometimes when you are just putting it in it will arc.

Q. Will a knife switch arc when you close it fairly rapidly?

A. I will tell you honestly that I haven't paid a great deal of attention to them, but since this fire I have looked at them and have seen them. If they are low voltage you won't notice the arcing very much, but when you get up to 110 volts you will see them arc sometimes, but not always; you will always get an arc when you pull them out.

Q. Whether or not you get an arc when you are closing a switch, Mr. McCoy, doesn't that depend on whether the points are clean?



A. The points may be clean and still there may be an arc.

Q. If they are clean smooth you won't get any arc, but if they are not clean smooth you may, is that right?

A. I think so, but I don't know for sure.

Q. Now you were asked something about gasoline vapors in an engineroom, and you said something about gasoline in the old days of '76. The old days of '76 are gone. You didn't mean the old days of '76, did you?

A. No, because I wasn't living at that time. I was talking about the old naphtha days.

Q. What did you mean by "76"?

A. That is what they called the degree of gasoline; 76 degrees. I suppose it was some kind of a hydrometer measurement. You could put your hand into it and hold it up like that and it was absolutely gone.

Q. You mean it vaporized very fast?

A. Yes, vaporized very fast. But now with the low gas that you get today; for instance, kerosene has a heavier vapor than gasoline—

Q. I am talking about the temperatures at which gasoline vaporizes; do you know anything about the temperatures at which gasoline vaporizes?

A. No, sir; only from practical experience by sticking my hand in it.

Q. Your hand is pretty cool when you pull it out?

A. That is right.

(Recess.)

(By Mr. Matteson):

Q. You told us about breaking this gasoline line when you laid up a vessel in order to draw off the gasoline; was that the lowest point in the line where you broke it?

A. Yes, it was absolutely the lowest point in the line.

Q. After you emptied it in that fashion was there any gasoline left in the lines of the system anywhere?

A. There was no gasoline left in the lines.

Q. Did you make it a practice to open that line for the purpose of drawing off gasoline at any other time than when you laid up the vessel?

A. Excepting when draining the tanks for laying up the boat. Pilkington told us we had to get the gasoline out.

Q. You were asked about the capacity of the Blue Lagoon and you said there were actually four berths, and you started to add something else—

A. I don't get your question.

Q. You were asked about the sleeping capacity of the Blue Lagoon.

A. Yes, and I said there were four berths, and I was going to tell him that we had slept eighteen aboard there.

Q. I want to ask you this: When you drew off the gasoline for the purpose of storage at Pilkington's, what were the conditions with respect to ventilation of the boat?

A. Every window and every door was open, and the floor boards forward were up, and that wheel box, as I said before, was there—and the screen door was open, pulled it open so as to allow as much air as possible to get into there; and we took the window screens out of the windows—

Q. And where was the Blue Lagoon then?

A. It was outside of the storage Basin at a little wharf, perhaps 150 feet away.

Q. She was not under the shed?

A. No, not under the shed.

Q. Mr. Underwood asked you a question; he asked you if you smelled the odor of gasoline all around the shed

and you said, you did. Just what did you mean by that?

A. I mean that when I stood on the shore I could smell gasoline as if it came over from the Seminole; as if it was over on the Seminole; I could smell gasoline, and when we got in the barge at Pilkington's, got about 50 feet away, there was a headwind blowing along there, and every once in a while we would get a strong whiff of gasoline; there was a little bit of a wind along there; just enough of a breeze so that you could tell that the smell came from the Seminole.

Q. What I want to get clear is this: when you answered that question as you did, Mr. McCoy, did you mean for us to understand that you could smell gasoline at the west-end of the shed as well as at the—

A. No; the west-end of the shed was 535 or more feet up from there. Of course we didn't go up that way; we stayed right around the Seminole; there was nothing up there.

Q. Is that the place where you smelled the gasoline?

A. Yes, down around the Seminole.

Q. Did you tell us what price per foot Pilkington charged you for the Blue Lagoon?

Mr. Underwood:

I object to that; it has no materiality here.

The Court:

He said he didn't make the contract with him; he said his brother Bill made the contract.

Mr. Matteson:

I was asking him if he knew what the price for the storage was.

The Court:

I don't think it is material.

Mr. Matteson:

It is not very important. It is just a detail that I was adding.

(By Mr. Matteson):

Q. In answer to one of Mr. Underwood's questions, you spoke of there being cans in the engineroom.

A. We had aboard there these cans; also, as I said before, we had these water bottles and we had some cans. We had these cans and a funnel; we kept these cans on the upper deck.

Q. And the tank was on the upper deck?

A. The tank was just back of the wheel box.

Q. Was that an open or enclosed tank?

A. The tank was enclosed; it had an opening cut around the valve and another one over at the other side, so there would be a circulation of air through the tanks to remove any fumes, if there was any.

Q. These cans that you spoke of, were they used in the engineroom?

A. No, they were empty; when they were emptied we would store them under the after deck, store them up; we would store them and cork them up.

Q. You spoke of a catch basin for catching water or condensation in the gasoline line; did you have in mind such a contrivance as this, which is a part of Exhibit 17?

A. Yes, something on that line; it has a strainer, and you would pull it off at the bottom and you would get probably a couple teaspoonsful.

Q. The one you have in mind would have a larger receptacle at the bottom?

A. Yes, larger.

Q. When you and Mr. Underwood were discussing this piece of pipe, Exhibit 2, consisting of a number of pipes and connections, I believe you called attention to something with respect to it; was there something that

you wanted to say about that, something that you wanted to add about it?

A. That union is expanded.

Q. You are referring to this?

A. I am referring to this hole (indicating) in it; it has expanded so much that it rubs all the way up here on these threads (indicating).

Q. You are referring to this?

A. A little above that.

Q. Just let me describe it on the record; you refer to this brass union, that is next to the nut where the valve is connected?

A. Yes.

Q. All right.

A. Now, you see that nipple, and you see some of the threads show, but you don't see any threads showing here (indicating); so I would say that is a second-hand union used over again.

Q. The threads don't show at the other side of the union?

A. That is right, and as a general thing you can't make these things tight; I would take that and throw it away.

Q. I think you called attention to some condition with respect to the upper part of this valve that was taken apart?

A. Yes.

Q. What was that?

A. Well, I would say that it wasn't a suitable gasoline valve because it is liable to leak. Another thing is here (indicating); you see there (indicating) is a crack, and this thing is weak and would leak right there, unless it was tightened up with a Stillson wrench.

Q. Is this the part here (indicating)?

A. Yes, that extends right across here (indicating); don't you see something there that looks like a crack or



something; it looks like a crack to me with my eyes, but I do not have my magnifying glass with me. Now, if that was screwed down tight it would leak right through there (indicating); it don't take so much pressure to push gasoline through a little bit of narrow opening like that.

Q. Did you note or do you note any other condition about the surface of this valve; I am talking about the surface that goes against the seat?

A. I think it is too flat seated to make a good gasoline valve. I don't think you could get enough pressure to push down—the seats are bronze, which of course is a good thing too, but I think you would want a better quality of valve than that for gasoline. I have some ideas myself.

Q. You told us that when you had a pipeline for conveying gasoline made up of brass pipes and threaded connections, that vibration would set up fatigue and eventually the pipe might break. Is there any other objection to that sort of a setup that you know of?

A. Weil, I can't say just now, but I did have one to break with me.

Q. Even if they don't break is there any other danger?

A. Brass?

Q. A pipeline made up of threaded connections, all brass.

A. Of course so long as they don't break there is nothing to worry about, but they are liable to break, and as a general rule they will break quicker than one without all of these connections.

Mr. Matteson:

That is all.

## Re-Cross Examination.

By Mr. Underwood:

Q. This union that you spoke about, Mr. McCoy, you say this is a second-hand union?

A. Well, it may have been brand-new when he put it on there.

Q. What is your objection to that, that the threads do not show on the other side of the union?

A. Absolutely.

Q. Does that merely—

A. I can take it and see right here (indicating) that the thing is expanded, and you can see it too.

Q. Do you say that that was its condition before the fire?

A. Why sure; nobody touched it since, so it must have been.

Q. Do you say that the fire on the Seminole could not have done that?

A. Yes, I will say that it could not have done that.

Q. It could not have expanded it, is that right?

A. Wait a minute—

Q. You answer my question: do you say that the fire on the Seminole could not have expanded it, if it is expanded?

A. Yes, but not in this kind of condition; you couldn't screw it up after it had been expanded.

Q. Do you say that that was expanded prior to the fire?

A. I do.

Q. Do you say that that necessarily made it leak?

A. I won't say that it leaks exactly, but I will say that this is a poor fitting on a gasoline line.

Q. Why?

A. Because it is liable to leak.

Q. What makes it liable to leak, the nature of the fitting or the fact—

A. Because it has expanded.

Q. Do you know whether that was the original shape of that union or whether it was expanded by turning up this nipple in it so far?

A. Wait a minute—

Q. Did you ever see this nipple?

A. No, I never—

Q. Then you don't know whether that was in shape before or not?

A. Wait a minute—

Q. Will you please answer my question; do you know?

Mr. Matteson:

If your Honor please, I submit that counsel is arguing with the witness.

The Court:

Go back and read the last few questions.

(Thereupon the preceding four questions and four answers were repeated by the Reporter as above recorded.)

The Court:

Strike out everything after the first question.

A. Every union that I ever purchased—

Mr. Underwood:

Now, if your Honor please, may the witness be instructed to answer my question?

The Court:

Read him the question.

(Thereupon the question was read by the Reporter as above recorded.)

A. I don't know whether it was the original shape of the nipple or not, or whether it was the original shape of that union, or whether it was expanded by screwing of that one particular nipple, but I say that that union has been expanded and has been screwed up evidently.

Q. Did you ever see this union before today?

A. I paid no attention to it; it was laying up there with the rest of the junk; I suppose I saw it, but I didn't make any inspection of it.

Q. You never observed ~~it~~

A. I never observed it until I saw it here today.

Q. I have taken this Exhibit 2 apart. I want you to look at the smaller piece, that is, the valve attached to the union that we have been talking about, or so much of it as remains, and will you look inside of that and tell me if you see the end of the nipple?

A. Yes.

Q. Does that appear to be up tight against the union?

A. Yes, it appears to be tight. I will admit that, but as I say, I have never been able to find any of them to hold gasoline; in fact I wouldn't approve of it on a gasoline line.

Q. You condemn all such things?

A. I condemn any of these that are expanded—I don't know what you call it; if you will look at the end of it, you can see that it is expanded; you can hold it up and look at the different angles. If you would put calipers on it, you could get the diameter of it.

The Court:

Where did you say it is?

The Witness:

Right in here; you could see it right in here; you can see it right here (indicating). If you had calipers you could see it easily. Of course, you can't take "appearances" for gasoline—

(By Mr. Underwood):

Q. Of course you don't know whether this actually leaked or not, do you?

A. No.

Mr. Underwood:

That is all.

The Court:

We will recess until 9:30 tomorrow morning.

(Thereupon a recess was taken to 9:30 A. M., March 22, 1939.)

March 22nd, 1939, 9:40 o'clock A. M.

Hearing resumed pursuant to adjournment of the previous day. Appearances same as heretofore noted.

947 Whereupon DR. ROBERT E. BLOUNT was produced as a witness by the Libelants, and having been first duly sworn, was examined and testified as follows:

#### Direct Examination.

Br. Mr. Matteson:

Q. Doctor Blount, you are a doctor of medicine?

A. Yes.

Q. How long have you held that—



The Court:

What is your full name?

Q. Your full name?

A. Robert E. Blount.

Q. Where do you live?

A. Fort Lauderdale.

Q. And the street address?

A. 360 Southeast 26th Avenue.

Q. You are a doctor of medicine?

A. I am.

Q. How long have you held that degree?

A. Seven years.

Q. Were you in Fort Lauderdale on June the 24th, 1935?

A. I was.

Q. With what hospital were you connected at that time?

A. Memorial Hospital.

Q. Do you recall the admission of a patient by the name of John Thomas on that date?

A. I do.

Q. Have you recently examined the records of his case?

A. I have.

Q. Did you yourself personally have to do with the treatment of John Thomas?

A. I did.

Q. Will you please, Doctor, tell us as nearly as you can from the time of his admission, through the balance of that time, what you recall about his condition, his treatment and what occurred?

A. This boy was brought into the hospital approximately two o'clock on the 24th of June, brought in by ambulance. He had a temporary splint that the ambulance attendants had put on his left leg. He had lacera-

tion over the brows, and a deep laceration in the neck on the right side; superficial burns about the face, and upper arms. On admission he was administered a quarter of a grain of morphine, seven and a half grains of caffeine; an ampule of tetanus antitoxin; an ampule of coramine. Cleaned up his cuts, they were sewed up; a Thomas splint was applied to the left leg, which was fractured in the lower third of the femur. The patient was put to bed, he required no other treatment other than his fluid intake, until around seven o'clock that evening; he was given another quarter of a grain of morphine, and another seven and a half grains of caffeine to counteract any depression that his morphine might have given him. About eleven or eleven thirty that night—well, I saw the boy at 8 o'clock, about eight o'clock that night, and dressed his cuts on the head, and on the neck; and stayed there for approximately half or three-quarters of an hour, and then left. That night about eleven, or eleven thirty, he required another quarter of a grain of morphine and then no more was administered to him until along the next morning. He was reasonably comfortable,—of course the matter of superficial burns and attendant shock, any one in that position; he was at that time objectively in good shape, and there wasn't much in the way of treatment required other than that, for several days.

Q. During this period from his admission there, until eleven o'clock that night, what was his condition with respect to his consciousness.

A. Oh, he was conscious.

Q. What was his condition with respect to lucidity?

A. He was lucid.

Q. Now, did you receive a telephone call from someone?

A. I did.

Q. And who was that?

A. Garry Miller.

Q. Do you remember at about what time?

A. Oh, I would say between seven thirty and eight that evening.

Q. And what was the nature of the telephone conversation?

Mr. Underwood:

If your Honor please, I object to any such conversation; immaterial, irrelevant and not binding.

Mr. Matteson:

It is not evidence of a fact; I don't want to lead the witness; I am trying to be careful and avoid Mr. Underwood's objections, but I think it will be perfectly clear and pertinent when the conversation develops, and not prejudicial to Mr. Underwood in any way.

The Court:

Subject to a motion to strike, he can answer the question.

A. Mr. Miller asked permission to see the patient.

Q. And was that permission given?

A. It was.

Q. And who gave that permission?

A. I did.

Q. Did you see Mr. Miller after that?

A. I saw him at the hospital.

Q. And about what time was that?

A. About eight, between eight and eight thirty.

Q. And will you tell us under what circumstances you saw him?

A. They came into the hospital with my permission to see the patient, and he wanted to ask him some questions in regard to the accident. I saw no objection to

him doing it; asked him not to stay more than fifteen minutes; and I was there all the time Mr. Miller was in the patient's room; and I was still there after he left.

Q. Was there anyone with Mr. Miller?

A. Two other gentlemen.

Q. Do you know who they were?

A. I do not know; no, sir.

Q. During the time that these gentlemen were in Mr. Thomas' room, what was Thomas' condition at that time?

A. His condition was satisfactory.

Q. Was he in your opinion at that time able to think and express himself clearly?

A. Yes.

Q. Any reason why his mental functions should not be alert and active at that time?

A. No, I think not.

By Mr. Botts:

Q. Doctor Blount, I would like to ask you this question: At the time when Mr. Miller and the other gentlemen of whom I was one went into Mr. Thomas' room, I will ask you if, in your opinion, Mr. Thomas was in a mental and physical condition to have made a coherent and intelligent statement? Was Mr. Thomas, in your opinion, in a mental and physical condition so that he could have stated truthfully circumstances immediately antecedent to his injury?

A. Yes.

Q. Doctor, how long did you continue to treat Mr. Thomas?

A. Until the time of his discharge.

Q. And approximately how long was that; can you recall?

A. A little over two weeks, I believe.

Q. I will ask you this question: While Mr. Thomas was under your care, did you observe any occasion when

he was unconscious, delirious, or, apparently suffering from any loss of memory, or delusion?

A. Well, that will have to be answered separately because each one of those things has—I mean, he doesn't suffer from all; but he will say that following the time of the open reduction of that left leg, that on the second day of July, for about 48 hours following that, he was not entirely rational all the time.

Q. But except for that period, he was rational?

A. Except for that period he was rational.

Q. Now then, I believe you have stated that prior to about eight thirty before myself and the other gentlemen visited the patient, that he had received two different doses of a quarter of a grain each of morphine?

A. That is correct.

Q. Was that through the mouth or hypodermically?

A. Hypodermically.

Q. I will ask you whether or not the amount of morphine that you have indicated was given to him, would be sufficient to render the man incapable of exercising his mental processes?

A. In this particular case I will have to answer it this way; I don't think in this particular case, due to the fact that he was suffering from several injuries, the amount of morphine that he had would not be enough.

Q. That is all—what is this other that you say you gave him to counteract the—

A. Caffeine and coramine.

Q. And what is the reaction produced by those drugs?

A. Well, they are heart and circulatory stimulants, usually given to counteract the depressive action of morphine.

Q. In other words, the morphine would produce—would tend to decrease the pain, but those other drugs would tend to keep his other functions—functioning of heart and circulatory system up pretty well to par, is that the idea?



A. That is the purpose.

Q. Thank you, that is all—I will ask you this up; do you recall now, having seen me, that I was one of the gentlemen who was there with Mr. Miller?

A. I do now, yes.

### Cross Examination.

By Mr. Underwood:

Q. When were you granted permission to practice medicine in Florida, Doctor?

A. In 1933.

Q. What month?

A. I took the State Board in June; it was approximately six weeks following that, six to eight weeks, I believe it was in August 1933; I am not positive.

Q. Were you an interne at the hospital at that time?

A. At Lauderdale?

Q. Lauderdale.

A. No, sir.

Q. You were practicing by yourself?

A. Yes, sir.

Q. Did you serve an internship before you passed the State Board?

A. Indianapolis.

Q. Indianapolis?

A. Yes, sir.

Q. You had been practicing medicine for two years, slightly less, when this occurred?

A. Yes, sir.

Q. Have you told us all you know about the things that you administered to this man on that afternoon with the exception of the anesthetics that were required in putting on this splint?

A. He had an ethyl chloride injection with some ether in adjusting and applying the Thomas splint to the left leg.

Q. Why didn't you tell us about that when Mr. Matteson and Mr. Botts were asking you questions?

A. Beg pardon?

Q. Why didn't you tell us about that when Mr. Matteson and Mr. Botts were asking you?

A. They weren't asked.

Q. Don't you remember being asked to say what you administered to this man?

A. I didn't administer the anesthetics.

Q. What was administered to the man?

A. Yes, sir.

Q. Were you being frank with us, Doctor?

A. I am frank, now; I don't mean to evade.

Q. I think so.

A. I think not.

Q. Did you notice that I had this hospital report in my hand when I stood up?

A. No, sir.

Q. The first thing that was administered to him was a quarter of a grain of morphine, wasn't it?

A. Yes, sir.

Q. The next thing was acoramine ampule, wasn't it?

A. Yes, sir.

Q. The next thing was the caffeine ampule?

A. Yes, sir.

Q. And then the tetanus injection, 1500 units?

A. Right.

Q. And then you applied the Thomas splint?

A. Yes.

Q. As an anesthetic, he received ethyl chloride and ether, didn't he?

A. Yes, sir.

Q. Will you tell us what a thromboplasin is?

A. It is a blood-clotting drug, because he was bleeding profusely, from his incisions, or his cuts, I mean.

Q. That was administered?

A. Yes, sir.

A. 5 c.c.'s?

A. Well, I wouldn't know; whatever the accustomed dose is.

Q. You don't know what the accustomed dose is?

A. No, sir.

Q. After that, another coramine ampule at 6:45 P. M.?

A. I believe so.

Q. At seven o'clock another quarter grain of morphine, is that right?

A. That's right.

Q. The patient was pretty restless, was he not?

A. Yes, sir.

Q. And he vomited large quantities of undigested food, did he not?

A. At one time.

Q. About that time, didn't he?

A. When he was reacting from his anesthetic; I believe it was at that time.

Q. About seven thirty?

A. I think so.

Q. He was still reacting from the anesthetic at that time?

A. He had reacted.

Q. Was the vomiting a part of the reaction?

A. Yes, sir.

Q. And that was about seven thirty?

A. I believe so.

Q. Actually, Doctor, this man was in considerable pain, was he not?

A. I should think so.

Q. Well, isn't it a fact that you know so?

A. No, I don't know so.

Q. Can't you tell that?

A. You can judge.

Q. And your judgment is, that he was?

A. Yes.

Q. It was for that purpose that you administered some more morphine at eleven p. m. at night; isn't that right?

A. That's right.

Q. Did you have a discussion with the man yourself?

A. The man, Thomas?

Q. Yes, in regard to—

A. In regard to what?

Q. Anything apart from what a doctor ordinarily talks to a patient about.

A. Not that I remember.

Q. Did you ask him any questions about his condition, or did you just go and look and do your job?

A. I don't understand what you mean.

Q. Did you ask Thomas any questions about his physical condition, or did you just observe and act on your own judgment as to what he required?

A. Oh, no, you don't do that.

Q. What did you do on this occasion?

A. Like you do with anyone in the same circumstances.

Q. Well, did you hold any discussion with him about the cut on the back of his neck?

A. I don't see, I mean I don't understand what you are after; I don't know what you mean. Why discuss the—

Q. I appreciate your reluctance to answer my question.

A. No, I am not reluctant, don't misunderstand me; I am not reluctant at all.

Mr. Underwood:

May I ask that the question be read? I think it is a perfectly plain and simple question.

Q. ("Well, did you hold any discussion with him about the cut on the back of his neck?")

A. Well, the only thing I would say, was probably in regard to pain.

Q. I would like to have you tell me what you remember of any discussion you had with Thomas; not what you would do or might do.

A. I don't remember discussing his cuts with him at all.

Q. Do you remember discussing his burns with him?

A. No.

Q. Do you remember discussing his broken leg with him?

A. Oh, yes.

Q. Well, now, tell us what transpired in your conversation with Thomas about the broken leg?

A. If I remember correctly, the only discussion that came up about the broken leg, was the manner in which he was able to escape from the position that he found himself, to where he was picked up out of this—either on this island or on the bank of this river, with the broken leg. I marveled at the fact that a man with a broken leg could extricate himself from the wreckage of the boat and got as far away from it as he did, at the time. There was just talk of that nature, that is, I was interested in the fact that he, with the broken leg, had gained as much distance from this wreck that he had; which is natural in any one, be he layman or physician.

Q. Is that the only discussion that you remember having with him?

A. I believe so.

Q. Was he entirely lucid and clear in that discussion?

A. Yes.

Q. You think he was?

A. Yes, I know he was.

Q. Was anybody else present during this afternoon?

A. Doctor Hendricks was there when he came in and the girl on emergency service; I don't know who the nurse would be; but Hendricks was there at the time that he was admitted.



The Court:

Did the witness state the time he was admitted to the hospital?

Mr. Underwood:

He said two o'clock, your Honor.

Q. Is that right, Doctor?

A. About that time, yes.

Q. Did you administer any tests to Thomas to determine his mental condition that afternoon and evening, prior to this conversation?

A. Nothing other than ordinary conversation.

Q. Now, you have remembered only one conversation; and that's the one about the broken leg. I ask you if you administered any tests to the man to determine his mental condition, and you tell me "nothing but ordinary conversation"; is that right?

A. That's right; no tests were made.

Q. Had you ever seen Thomas before?

A. No, sir.

Q. It is true, isn't it, Doctor, that a given amount of morphine affects different people to a different degree?

A. True.

Q. One thing I neglected to ask you, Doctor; what is your present recollection as to when Thomas first began to exhibit the effects of shock?

A. The second or third day, I believe; I am not positive.

Q. Not until then?

A. I don't believe so.

Q. You are sure about that?

A. Well, I am not sure, but that's as close as I could come to it.

Q. Do you remember whether he slept any from the time he was admitted to the hospital to the time these gentlemen called on him?

A. I don't believe he did.

Mr. Underwood:

That is all.

Re-Direct Examination.

By Mr. Botts:

Q. Doctor, what is a Thomas splint?

A. Well, it's a temporary—more or less a temporary splint, used, not in a reduction of a fracture of this nature, but more or less to immobilize it. It has a metal ring, padded with leather, that fits in the groin, supported on either side by a bar that runs the length of the leg, under the foot. That is the splint in itself; in other words, it is a ring that fits in to the groin, and a metal—

Q. The purpose of it is to stretch the leg out to its normal length?

A. No; just a support; it is immobilization that keeps them from having any further damage than has already been done.

By Mr. Matteson:

Q. Doctor, will you let me ask you about this anesthetic, that you were asked about. What was the effect of that?

A. You mean, after effect?

Q. Well, at the time; how long was he under anesthetic?

A. Not more than fifteen or twenty minutes, I don't believe, at the longest.

The Court:

What was the question?

(The preceding question was read by the Reporter.)

Q. What was the nature of the anesthetic that was given him, do you recall?

A. What do you mean by the nature of it?

Q. What was it?

A. Ethyl Chloride and ether.

Q. Now, at eight o'clock, was there any after effects from this anesthetic, that would make it impossible or difficult for Thomas to function properly mentally?

A. Well, I would rest his head and neck and talk with him, and he was conscious, perfectly able to carry on a conversation, aside from being uncomfortable.

Q. If you had thought there was any doubt about his lucidity or ability to talk with people, would you have permitted these gentlemen to interview him?

Mr. Underwood:

Object to that as speculative, your Honor.

Mr. Matteson:

I should think the Doctor ought to be permitted to answer that, if your Honor please. He has been somewhat attacked here, and I think it is just a matter of defending himself.

The Court:

All right, I will overrule the objection.

A. Will you repeat the question, please?

(The preceding question was repeated by the Reporter.)

Q. Will you answer that question, Doctor? Did you understand the question?

A. Yes, but—that wasn't the reason that Mr. Miller was given permission to interview the patient. I gave him permission because I thought the man was well

enough to talk to him; I didn't think it would do him any physical damage.

Q. That was what you were taking into account?

A. Yes.

Q. And did you as a matter of fact think he was able to talk?

A. I had just finished talking with him and he was able to converse intelligently.

Q. Doctor, will you tell us about your medical education, preparation?

A. That is rather hard to do. All I can do is tell you where I went to school.

Q. That is what I would like to know.

A. Indiana University 1926 to 1932; was graduated in June, 1932; served five months of internship in the University Hospital, and resigned due to financial embarrassment, and came to Fort Lauderdale and was associated with Doctor Lingerman in his office from the first of December until the first of June, 1933; then I opened my own office.

Q. You went into practice?

A. I opened my own office in 1933.

Q. Are you still practicing in Fort Lauderdale?

A. Yes.

Q. Are you attending here as a witness under subpoena?

A. Yes.

Mr. Matteson:

That is all.

#### Re-Cross Examination.

By Mr. Underwood:

Q. Do you remember a conversation with Mr. Riley on the afternoon of June 24th about the time you were administering the Thomas splint?

A. Wasn't Mr. Riley the man from Palm Beach?

Q. Yes.

A. Yes.

Q. Is it not a fact, Doctor Blount, that you told Mr. Riley at that time that Thomas was suffering mainly from shock?

A. Possibly, yes.

Q. Do you deny that?

A. No, I don't deny it.

Q. Do you remember telling me a while ago that your recollection was that he didn't begin to suffer from shock until the second day, or third day?

A. True.

Q. Now, which is right?

A. Well, they are both more or less right. Any one—wait a minute let me answer; anyone who has undergone that type of injury, any injury for that matter, is in some physical shock; in other words, there is a certain amount of nervous upset due to anything of that nature. However, the shock that we refer to as the popular type of shock is the lowering of the blood pressure, producing sweating and usually a lowering of temperature.

Q. You are thinking now about objective symptoms?

A. Well, those are objective and subjective both; and sometimes irrationality, usually retention of urine; that's the type of shock that requires treatment and care. Your initial shock is disseminated by some form of sedation. Do you understand what I mean?

Q. I think so. Have you finished?

A. Yes, sir.

The Court:

Who is Mr. Miller?

A. Gary Miller?

The Court:

Yes.



Mr. Underwood:

An Attorney in Lauderdale. I don't know what his official position is; I never have cleared that up.

The Court:

Did you allow him to see the patient because you thought he occupied some official position?

A. I didn't go into it with him at all. He said he wanted to ask him some questions in regard to this accident that he had had and asked me if I thought he could see him. And I said I saw no objection to it, if he would only stay ten or fifteen minutes. I didn't even ask him the nature of his business.

The Court:

Suppose it had been just a curiosity seeker, if you had know that it was just a curiosity seeker, and not a member of the family or a friend of the family—

A. I think not, sir.

The Court:

And not an official, would you have allowed that?

A. I don't think so.

The Court:

Why wouldn't you?

A. Because you just don't do those things. Members of the family are never denied a chance to see him.

The Court:

That is all.

#### Re-Direct Examination.

By Mr. Botts:

Q. As a matter of fact, Doctor, don't you recall Mrs. Thomas was in the hospital at the time we interviewed him?

A. No, I don't remember that; I don't remember that Mrs. Thomas was there. I know she was there later, but I don't recall of her being there then.

Q. Mr. Gary Miller is the County Attorney in Broward County, is he not?

A. I believe that is his official position.

Q. And he was also the County Attorney at the time this accident occurred, was he not?

A. I believe he was.

Re-Cross Examination.

By Mr. Underwood:

Q. Were you in the room when these three men were there?

A. No, I wasn't.

Q. And you weren't present during this supposed conversation?

A. No, I wasn't.

Mr. Underwood:

That is all.

Mr. Matteson:

That is all.

Mr. Matteson:

If your Honor please, John Thomas, when he was on the stand, was excused subject to being recalled; and in view of the testimony the doctor has given as to his condition, I move that he may be recalled tomorrow morning, so that he can be questioned about this occurrence. I think that can be accomplished by us sending him a telegram to be here.

The Court:

I believe the arrangement was that he would come back.

Mr. Matteson:

That he would come back on call, yes.

The Court:

Is there any objection to that by respondents?

Mr. Underwood:

None at all.

Mr. Matteson:

Then I will make that arrangement, if your Honor please. In fact, I think the telegram ought to be sent by the Marshal. We would be glad to pay the expense of it, if we can tell the Marshal to send such a telegram.

The Court:

All right.

968 Thereupon J. M. PATTEN was produced as a witness by the Libelants and having previously been duly sworn, was examined and testified as follows:

#### Direct Examination.

By Mr. Matteson:

Q. What is your full name?

A. J. M. Patten.

Q. Your address?

A. 709 Avenue Minorca, Coral Gables.

Q. Your occupation?

A. Now a marine surveyor.

Q. What is your age, Captain Patten?

A. 61, very near 61.

Q. How long have you been a marine surveyor?

A. About seven years,—that is in Miami. When I was connected with the Shipping Board in Philadelphia I attended many surveys there. I had some big steamers.

Q. But you have been in active business in Miami as a surveyor for the past seven years, is that correct?

A. Yes, sir.

Q. Prior to that time what was the nature of your experience?

A. I have a record, if you want me to read it all. That is a pretty long story. (Handing paper to counsel.)

Q. You have handed me here a record of your experience.

A. My marine experience, yes, sir.

Q. Without going into details on this, you have served as seaman, quartermaster, officer and master of various vessels; is that correct?

A. Yes, sir.

Q. Do you hold any license?

A. Yes, sir.

Q. What licenses do you hold?

A. (Witness hands documents to counsel.)

Q. You show me a license to master of steam and motor vessels, serial number 146256, issued by the Bureau of Navigation, Steamboat Inspectors, United States Department of Commerce, issue number 8-9, any gross tons upon the waters of all oceans; is that right?

A. Yes, sir.

Q. With various pilot commission attached?

A. That is right.

Q. And you also show me a license to engineer of vessels propelled by gas, fluid, naptha, or electric motors, issue 6-6—by the Steamboat Inspection Service, Chief Engineer of Vessels in gross tons; is that right?

A. Yes, sir.

Q. These licenses are still in effect?

A. Yes, sir; that last one is not in effect, 65 foot, I let that die out.

Q. The last one I spoke of?

A. No, the one you haven't read yet; that is a 65 foot license.

Q. The last one you have just referred to is to license to operate to navigate or operate vessels not more than 65 feet in length?

A. Yes, sir.

Q. That one you say has run out?

A. Yes, sir.

Q. The others are in effect?

A. In force.

Q. What sort of vessels have you served as master of?

A. Steam yachts, tugs, lighters, steamships, steam yachts, Diesel yachts.

Q. During the war what service were you in?

A. Which war?

Q. 1917?

A. In 1917 I was in command of the Winchester, the Amcline, the Sachem and the Rogday, that is a wrecking ship.

Q. And what was your rank?

A. I went in as Lieutenant and shortly promoted to Lieutenant-Commander.

Q. After the war what was your experience?

A. Well, I was with the Shipping Board; I was marine superintendent for the Lykes Brothers Steamship Company in New York; took a tug down to New Orleans.

Q. With the Shipping Board at New York you held the position of assistant port Captain for a year and at Philadelphia as marine superintendent for almost three years; is that right?

A. I was assistant port Captain for a year; and promoted to port captain, then sent to Philadelphia as marine superintendent, and promoted to district director.

Q. And you left Philadelphia in May 1927?

A. Yes, sir.

Q. And since then what sort of vessels have you served on?

A. Three Diesel yachts; that's about all I can recall.



Q. And in your business as surveyor of vessels, here in Miami, of which you have told us, what types of vessels have you surveyed?

A. Mostly gasoline, probably some Diesel, some auxiliaries.

Q. And over this period of seven years, can you give us any idea approximately how many vessels you have surveyed?

A. That is hard to say unless I went through my files.

Q. Can you approximate it?

A. I will say a thousand, and be safe.

Q. And what were the purpose of these surveys?

A. Well, there were different kinds of surveys; surveys for purchaser, to see if he is getting a good vessel, which he needs; and there is condition survey for insurance companies, at which you find out what is necessary to make the boat safe and make a report of it, and there is damage survey.

Q. Those are the general classifications?

A. Yes, sir.

Q. Now, Captain, do you remember the fire at Fort Lauderdale on June 24, 1935?

A. Yes, sir, I do.

Q. Did you go up there to the Pilkington yard on that date?

A. Yes, sir; I was called up.

Q. Will you tell us how you came to go?

A. It was along somewhere around seven o'clock I believe, it was raining pretty hard, and I received a call, I think from Hunter-Lyons first, the insurance agent, who stated—

Q. Never mind what he stated, Captain.

A. Well, anyhow, I received a call from—later on from Mr.—Captain Pilkington's Yard, requesting me to come up.

Q. And from whom was that telephone call?

A. Mr. Miller.

Q. And in response to that request did you go up there?

A. Yes, sir; immediately.

Q. What Mr. Miller is that?

A. I understand he is district attorney or County Solicitor up there in Lauderdale.

Q. Is that Mr. Gary Miller?

A. Yes, sir.

Q. What time did you get there?

A. I know I made it in about 35 minutes; somewhere around half past seven.

Q. What conditions did you find when you got there?

A. Well, what was once a boat shed full of yachts, reminded me of mammoth tallow candles, there was the piling burning all at the top, and all the yachts but three,—there were three yachts that were partly scorched, and the Seminole she was sunk; and the rest of the yachts were just part of the wreckage stuck above the water.

Q. When you got there whom did you see?

A. Saw Mr. Botts and Mr. Miller, Captain Pilkington,—am I going too fast?—and Mrs. Pilkington.

Q. What did you observe with respect to Captain and Mrs. Pilkington?

A. Well, the poor old chap was about ready to—

Mr. Underwood:

If your Honor please, I don't see where that is material and I object to it,—the physical condition of Captain and Mrs. Pilkington.

Mr. Matteson:

Yes, I think it is quite material at that time; what I have in mind, is that Mr. Underwood, just made some

suggestions of some statements that may have been made by Captain Pilkington at that time, and his physical condition is important.

Mr. Underwood:

Not at that time.

Mr. Matteson:

You haven't testified, but I think we should have a picture of the circumstances.

The Court:

I don't see the materiality; I think the materiality ought to be shown before the testimony is admitted.

Mr. Matteson:

If your Honor please, of course it will be difficult to call witnesses back every time and read and re-examine them on a point that it seems to me—I won't press that.

Q. How long did you stay there at the yard at that time?

A. Until five in the morning, that is the following morning.

Q. Did he leave the yard during that evening some time?

A. Yes, sir; I went up to the hospital with Mr. Botts and Mr. Miller.

Q. And about what time was that?

A. I wouldn't be positive; it was somewhere around nine o'clock.

Mr. Underwood:

May I have that answer read, please?

(The answer was read.)

A. Might have been later than that; I don't know.

Mr. Matteson:

Will you read the last answer, please?

(The answer was read.)

Q. Well, you went up there with Mr. Botts, did you say?

A. Over to the hospital?

Q. Yes.

A. Yes, sir.

Q. And was Mr. Miller with you?

A. Yes, sir.

Q. When you got to the hospital, what did you do?

A. The three of us went up, I think, one flight of stairs, to the room where Thomas was in bed.

Q. And did you go into that room?

A. Yes, sir.

Q. Whom did you see there?

A. Saw a man lying in the bed, which I assumed was Thomas; I never met the man before.

Q. Did you see Mr. Thomas when he testified here on the stand?

A. Yes, sir.

Q. Was that the man?

A. That's the same man.

Q. Did you see anyone else there?

A. I believe there was a nurse there; I didn't pay particular attention to who was in the room.

Q. When you went into the room, just tell us what—first of all what you observed, with respect to Thomas' condition.

Mr. Underwood:

If your Honor please, I object to this witness stating any conclusions as to the physical condition of anybody present.

Mr. Matteson:

I haven't asked him for any conclusions. I have asked him for what he observed, if the Court please, and I think we are entitled to have everybody who was there to say what they saw and observed.

The Court:

Overrule the objection.

Q. I will ask you, Captain Patten,—don't give any conclusions, just say what you saw and heard.

A. Well, the man had a bandage around his head, and around his neck, which showed—I have taken a first aid course, years ago, and I was always interested in surgery; and it showed me he had an injury in the back of his head or back of his neck. His leg was covered up, I couldn't see what was under there.

Q. Just tell us what transpired after you got in the room.

If your Honor please, may he be instructed at this point not to give any conversation until he is asked that direct question, and we have an opportunity to object.

A. I will try not to.

Q. I understand that; just don't give what was said, but just tell us generally what occurred.

A. Can I say that a man asked questions?

Q. Yes; who asked questions?

A. I think it was Barry Miller and possibly Botts; I am not sure now, but I know the questions were asked.

Q. Were you present when the questions were asked?

A. Yes, sir.

Q. Did Thomas reply to the questions?

A. Yes, sir.

Q. What did you observe as to whether or not Thomas had any difficulty in replying to the questions?

A. Well, Thomas talked in a low—



Mr. Underwood:

If your Honor please, we are getting into conclusions here.

A. I am not going to say what he said, I am describing.

Mr. Matteson:

He said Thomas talked in a low—I assume he was going to say “voice”.

A. I am not going to say what he said.

The Court:

Objection overruled. Answer the question.

A. Thomas seemed to be collected, talked in a low voice.

Mr. Underwood:

If your Honor please, that is precisely what I objected to; “he seemed to be collected”; that seems to be a conclusion.

Mr. Matteson:

I think certainly that is an observation that any human being can make with respect to a conversation with another.

The Court:

That has always been a close question with me. I shall overrule the objection to that.

Q. You were saying he spoke in a low voice?

A. A low voice and seemed to have all his faculties, answered the questions that was put to him; he was not irrational.

Q. Now, I want to ask you, Captain Patten, whether in the course of that conversation Mr. Thomas said to Mr. Miller or to Mr. Botts or to yourself: "Captain Abel went down toward the engine room, to inspect the boat. I could smell a slight odor of gasoline and warned Abel to be very careful as one always has to be careful in a boat which is laid up."

Mr. Underwood:

If your Honor please, I object to that question. In the first place, that is not the question that was put to Thomas, as to his conversation with Patten.

Mr. Matteson:

Where do you find it?

Mr. Underwood:

Page 19.

Mr. Matteson:

All right, I skipped one, then. There is one here and there is one here. I will ask him about both of them.

Mr. Underwood:

That was to Miller, though.

Mr. Matteson:

I said, to Miller or to Botts or to himself.

Mr. Underwood:

As far as Patten is concerned, Thomas was confronted with only one question, as I read the record. At any rate, I object to it also on the ground that it is not proof of any fact in this case; and on the ground that Thomas did not deny having made such a statement; and on the ground that they cannot impeach their own witness.

The Court:

This question is for purpose of impeachment?

Mr. Matteson:

Yes, sir.

The Court:

Overrule the objection.

Mr. Underwood:

What page is that?

Mr. Matteson:

20.

Q. Did Thomas make the statement which I read to you?

A. Yes, sir, but you haven't given all of his answer.

Q. Of course not.

A. He did include that, yes, sir.

Q. Now, I will read you something else and ask you if Thomas at that time made this statement.

Mr. Underwood:

Will you tell me the page?

Mr. Matteson:

Now, on page 19.

Q. "Captain Abel crawled through the engine room window, and I told him I smelled a slight odor of gasoline, and for him to be careful".

Mr. Underwood:

Same objection, your Honor.

The Court:  
Overruled.

A. Yes, sir; he made that statement.

Q. At that time (this is on page 21) did Captain Thomas make this statement: "When the explosion happened I was looking at Captain Abel through the engine window; and in order to get lights, Captain Abel threw the knife switch located in the engine room; when he threw the switch, why, the switch arced, and there was an immediate explosion".

Mr. Underwood:  
Same objection.

The Court:  
Overruled.

A. Yes, sir, he made that.

The Court:  
Now, read that question again.

(The last question was read by the Reporter.)

Q. Without telling me what else was said, Captain, I want to ask you whether there were other questions and answers?

A. Yes, sir.

Q. —in that interview?

A. You didn't complete it so far.

Q. Was anything written down at that time?

A. Just as soon as we could leave his bedside, with propriety, we all three went down to the desk in the hospital and I believe it was Mr. Botts wrote, took it down on the stationery of the hospital,—that Thomas' report.

Q. You say Mr. Botts wrote it down?

A. I think it was Mr. Botts; I am pretty sure.

Q. Did you see what was written down?

A. Yes, sir.

Q. Did you read it?

A. Yes, sir.

Q. Was what was written down a correct statement of what Mr. Thomas said?

A. I believe it was word for word.

Q. I show you these two sheets of paper and ask if you can identify these. What are those two pieces of paper, Captain Patten?

A. It is a letterhead of the Memorial Hospital, Fort Lauderdale.

Q. Well, what is the writing on it?

A. A statement of—Thomas' statement to us.

Q. Well, is that what was written down at that time?

A. Yes, sir.

Mr. Underwood:

By whom?

Q. By whom was that written?

A. I am pretty positive it was Mr. Botts.

Q. And this is the statement that you just told me was a correct statement of what Thomas said?

A. Yes, sir.

Q. At the time of—

A. That was written within three or four minutes after we left Mr. Thomas.

Mr. Matteson:

I would like to have this marked for identification.

(The paper so identified was marked Libelants' Exhibit No. 96, the same comprising two sheets.)

Q. Now after this conversation at the hospital, what did you do then?



A. I returned to the shipyard.

Q. And what did you observe and hear when you got there that time?

A. Well, the first thing that I did was to try to get Mr. Pilkington and his wife settled down; I tried to get the old gentleman to lie down; he was nervous and all gone to pieces.

Q. What did you do after that?

A. Later on I asked Mrs. Pilkington for a list of the boats that they had stored under the shed, so that I could notify the insurance companies of what had happened.

Q. Was the fire burning all that night?

A. All the tops of the piling was burning, and there was a big houseboat away down at the lower end and her superstructure was still burning, but the worst of the fire was over at that time; it was along towards morning.

Q. Did you have anything to do with the Seminole after that, or any time?

A. Yes, Carl Holm tried to recover the body by diving, just with a helmet.

Q. When was that?

A. That was the following day, in the morning.

Q. Were you there at that time?

A. I helped work the pump to give him air.

Q. From what did he dive?

A. From what?

Q. Yes, did he have sort of a boat there?

A. Had a float there; I am pretty sure it was on a float.

Q. And you say he dove into the Seminole?

A. He didn't dive; there wasn't much room for diving. There was so much steel and davits, and part of the superstructure was down in there, that it really was a dangerous thing for a man to do down in among that stuff.

Q. He put on a diving helmet, did he?

A. Yes, and from his bubbles, we could see, he couldn't very far.

Q. Was that attempt given up?

A. Yes, sir.

Q. What happened after that?

A. I believe Holm to get a pump and pump her out.

Q. Was the pump brought there?

A. Yes, sir.

Q. And when was that used?

A. It was used the next night, that would be Tuesday night.

Q. What time did they start to pump, do you recall?

A. I don't know whether I have got that in my records or not.

Q. Well, just generally, what time of day? Was it in the evening or afternoon?

A. It was late in the evening; I imagine around ten o'clock, something like that. I know we got her pretty well dry towards morning, before daylight,—just before daylight.

Q. Were you on the vessel or in the vicinity while this was going on?

A. Yes, sir; I was at the pump, sir.

Q. What kind of a pump was it?

A. As near as I can recall it was a three or three and a half—about three or four inch discharge, centrifugal pump.

Q. What was the motive power,

A. Looked to me like an old automobile engine.

Q. Will you tell us what you saw or observed on the Seminole while this pumping was in operation?

A. Well, they first put the suction down; first they went around outside, in diving helmet and plugged up all the scuppers, any place they could see the boat, the hull was leaking; and we had to wait until extreme low

tide so that the water got about an inch below her gunwale aft, otherwise you would be pumping the whole river. Then they put the suction of the pump into the engine compartment, or into that alleyway; I think they put it in the compartment first, and couldn't get it low enough, so then they found a place where they could get it pretty well down in the bilges. Started to pump, and that worked all right. And after we had pumped for an hour or so, I was on the float where the pump was. I smelled gasoline pretty strong; and the wind at that time was blowing from the westward, and the pump was discharging towards the east, that is, down the river. And I made a remark—

Q. Tell us what remark you made, Captain, just tell us what you observed.

A. Well, I said, it's—

Q. What is that?

A. I said, it was my remark, not somebody else's.

Q. That is all right; don't tell us about your remarks; just tell us what you saw and observed.

A. Well, I smelled a very strong odor of gasoline, sniffed around there and went around to the windward of the pump and I couldn't smell it there, so I come back and put my hand on the discharge water and smelled that, and we were evidently pumping a lot of gasoline out of the hull.

Q. And you determined that by sampling the discharge of the pump?

A. I didn't taste it; I smelled it.

Q. What else did you observe while this pumping was going on,—or at least what else was done that you recall?

A. Well, I see some of the men look at what they called a spring, down in the hull, so I went over and looked at it, and it was evidently some pipe that—

Mr. Underwood:

If your Honor please, this is an expert witness; I don't mind his saying what he saw.

A. Well, I saw it then.

Mr. Underwood:

It is not the spring I am objecting to, it is "evidently some pipe".

The Court:

Don't tell anything except what you saw.

A. Like I found what did cause this spring?

Q. Just tell us what you saw, step by step.

A. I saw of course all the water in this hull of the Seminole, the engine compartment was absolutely smooth, but there was a connection somewhere between the two engines, and forward of the two engines.

Q. Between the two engines and the bulkhead?

A. Yes.

Q. Forward bulkhead in the engine compartment?

A. No, sir; I didn't measure it, but it was somewhere in that vicinity.

Q. Describe that commotion to us.

A. Well, it looked like as if you was in a bath tub and had a hose underneath the surface, with not much pressure on; it made a little submerged fountain.

Q. What did you see done when you observed this?

A. It was either Carl Holm or his assistant that reached out and put a plug in it.

Q. In what?

A. In the pipe.

Mr. Underwood:

Could he see?

Q. Are you telling something that you saw?

A. Yes, I saw that.

Mr. Underwood:

I understand the question was, what did he put the plug in; am I right about that, or wrong?

Mr. Matteson:

That is the next question.

Mr. Underwood:

Sorry to interrupt you.

Q. What was it that you saw this plug put in?

A. At that time I didn't see what it was put in; I did see when the water was lowered in the hull that it was a pipe.

Q. What else, if anything, did you observe about the fountain there?

A. I don't understand just what you mean.

Q. What did you,—tell us its appearance, and what it was,—anything you say about it.

A. Well, at first I thought it was water, but when I looked at it closely I,—it didn't seem to be water, it seemed to be some other fluid, of a lighter density, come up and kind of rolled off in bubbles, not like water,—drops of water would merely go over with the water, but these kind of rolled over like a mushroom.

Q. Now tell us anything that you noted or observed while you were on the Seminole with respect to gasoline.

A. You mean before or after she was pumped out?

Q. Tell us from the beginning, all that you noted about it.

A. Well, while we were pumping her out, as I said before, there was a very strong mixture of gasoline and water coming through the pump.

Q. Did you observe or note anything else?

A. Well, I would have to tell what the other fellow said, that tasted this gas.



Q. Don't tell what anybody said, but you can tell what you saw or heard or smelled or tasted, or anything that came to you through your senses that you noted.

A. Well, I smelled gasoline inside of the hull, too.

Q. Now tell us just what you smelled and when you smelled it; tell us all about it.

A. Well, I smelled it after I observed this so-called fountain, water and gasoline bubbling up; and after she was pumped out, we went down—after they removed the body I helped drag him in a sheet over the debris; then I went down in the engine compartment with the Coroner, and the odor of gasoline was very strong down there; and I looked in the bilge and dipped up a handful of gasoline out of the bilge and let the Coroner smell it.

Q. Did you smell it?

A. I sure did.

Q. What was it?

A. Gasoline, because as soon as I took that out and held it up after a couple of minutes, it all evaporated. Water wouldn't do that.

Q. Can you tell us where this gasoline that you saw or smelled was with respect to the Seminole?

A. It was coming out of a small pipe.

Q. Did you afterwards identify the pipe?

A. No, sir; I don't think I did. We got so busy in removing the body and one thing and another that I didn't pay attention to that pipe. But after the water was lowered, we could see it, where Holm had stuck a plug and a piece of burlap in this pipe, a small plug.

Q. What I am trying to get at, Captain, according to your observation at the time there was or there was not a considerable quantity of gasoline in the Seminole?

A. There certainly was a lot of gasoline in there, but I have no idea what the amount was.

Q. Why do you say that?

A. I had no way of measuring or separating the gasoline from the water and measuring it.

Q. Why do you say there was certainly quite a lot of it?

A. Well, from the length of time we were pumping out this mixture.

Q. Can you give us any idea about this mixture, whether there was a trace of gasoline in it, or much, or a lot, or what?

A. Well, it was so strong around that I sent word over, "no lights to be lit, or cigarettes around Pilkington's house", and warned everybody within hearing not to strike a match or light a cigarette there; in fact some of the boys there beat it off the premises.

Q. Do you remember seeing Ben McCoy or Bill McCoy there?

A. They were there until the gasoline got too strong for them.

Q. When you smelled this gasoline and observed on the Seminole, what was the condition of the other vessels in the yard?

A. They were all gone, that is, you could see part of them stuck up above the surface.

Q. What had happened to them?

A. They were, I would say, totally consumed, everything that would burn on them.

Q. Did you observe any conditions indicating the presence of gasoline anywhere outside the Seminole?

A. No. When you got to windward of this pump, on the outer line, westward of the—around the middle of the westward end of the shed, you couldn't smell gasoline.

Q. After the body was removed did you observe the conditions in the hull of the Seminole then?

A. In what respect?

Q. Did you look around to see what was there?

A. Yes, I naturally tried to ascertain the cause, because I felt that somebody some day, at a later date, would ask why.

Q. Did anyone ask you to do that?

A. No, except at that time I was working under Mr. Miller, who asked me to represent him, and try and ascertain the cause of the explosion and fire.

Q. Did you take any photographs there?

A. Yes, sir; I always take photographs of any wreck or fire.

Q. I show this Libelants' Exhibit No. 12; is that a photograph that you took?

A. Yes, sir; that's my marking on there.

Q. And I show you Libelant's Exhibit No. 15; is that a photograph that you took?

A. Well, I took one from that view, because I had Mr. Anderson, who was a witness here, to put the white lead on the end of that pipe, and it was the end of a pipe there, so it would show up, but there was so many photographs taken,—I have got my signature on it; can I look at the back?

Q. Sure.

A. That's one of mine. I don't know about this one. Yes, this is another one; but that isn't my writing, I don't think.

Q. No, that was put on in connection with testimony of another witness. This photograph, Exhibit 12, has an elliptical shaped mark in ink; what is that?

A. This?

Q. Yes.

A. That was a man's head; that is the body of Abel, his head pointing this way; he didn't have much arms or legs left.

Q. That represents the position in which the body was found?

A. Yes, as near as I could mark it. There is a generator here, and he laid head to port between the forward end of the engine and the generator, about in that position, but when we first found him they had a concrete base

that was in the stack, over his body, that more or less protected him.

Q. That had fallen on him?

A. Yes, sir. I know it was quite a big slab of concrete; otherwise I don't think they would have found anything but a few bones.

Q. I show you these exhibits.

A. That's my handkerchief there.

Q. This Exhibit No. 16, is that what you took?

A. Yes, sir; and here is the end of that pipe with the white lead on it and the handkerchief represents where the body laid.

Q. And then Exhibit 22 is one of yours?

A. Yes, sir; my name is on it; that's before they got all this hatch and stuff out of the way.

Q. You say this picture shows the hatches and the funnels, - I mean the ventilators on the deck, over the engine room?

A. That was cleared off there while I was away; I didn't stay up there all the time; I had to go home and take a bath and get something to eat, as we were filthy dirty.

Q. When was that done?

A. That, I couldn't say; but this part of the engineroom was cleared at the time, you see, at the time.

Q. At the time the picture was taken?

A. Yes, at the time the picture was taken; the date will give you on there; photograph August 4th, you see it was pretty well cleared out by that time.

Q. This Exhibit 22, showing the deck, that was over the engineroom, was that taken off before the body was removed or not; can you tell us?

A. I believe it was, because the Coroner, three or four of us stayed right around there, and were certainly not standing under that stuff.

The Court:

Is this the top of the engineroom?

A. This is the hatch and the skylight, Judge, after the fire burned all the supports, that is, the ventilator, the whole thing dropped down over the engine; and I believe,—that is off the record, it is suicide for a diver to go down in that stuff; I wouldn't want to do it.

Q. Now, did you observe anything of the equipment that was in engineroom at that time?

A. Yes, sir; I did; yes, I looked at it.

Q. Just tell us what you observed there in particular.

A. Well, I was looking for the cause, possible cause of the explosion, I naturally, in my business had,—I do the same thing on any other boat, looking around and see if she was properly equipped, any drain valves or any leaky valves, that might allow possible seepage of gasoline to enter the hull.

Q. What did you see?

A. I found two valves, which, from the way they fitted, they were laying amidships, up close to the bulkhead, on a drain line.

Q. I show you Exhibit No. 11; is that the pair of valves that you are speaking of?

A. Yes, sir; I signed that tag when we got them out; and—

Q. And where do you say you found those?

A. Oh, I would say about a foot from the forward engine bulkhead, around midships.

Q. Did you observe anything—

A. They were laying,—that photograph you were showing me, had the white lead on, they were laying right under that position.

Q. You are referring to these photographs, 12 and 15?

A. There is your drain line.

Q. You have pointed to what you say is the drain line.

A. They were laying right down in here.



A. Right underneath—

A. Or, I will tell you, somewheres down in there; I couldn't say.

Q. On Exhibit 12, just indicate with a mark, with this pen.

A. This is only approximate.

Q. Just do the best you can.

A. There was a can and funnel in there; somewheres in about there, I should say.

Q. You have drawn a cross with a circle around it on Libelants' Exhibit 12, and you say that is approximately where,—

A. That is as close as I can place it, yes, sir.

Q. Approximately where the two valves were found?

A. Yes, those two connected valves.

Q. Did you observe anything to indicate that those valves had been connected with?

A. What called it to my attention first was being a five-gallon can close alongside of it; put two and two together.

Mr. Underwood:

I object to what he concluded.

Q. Just tell us what you observed, Captain.

A. Well, there was a five-gallon can with a funnel.

Q. Is this the can and funnel I show you, Exhibits—

A. That's the one, yes, sir.

Q. —13 and 14?

A. Yes, sir.

Q. Where did you observe them?

A. They were right alongside of it there, possibly a little bit to port, somewheres in about here.

Q. Now, suppose you make another mark on Exhibit 12, show us about where the can and funnel were.

A. I will just put a circle in there; there was, as I recall it, that funnel was stuck on the top of it, upside down.

Q. You have made on Exhibit 12, a small circle, just to the left of the mark that you last put on consisting of a cross and a circle?

A. Yes.

Q. And that indicates where,—about where the can and funnel were located?

A. Approximately, yes, sir.

Q. I was asking you about the valves; did you indicate anything,—did you notice anything to indicate anything, where they had come from or to what they had been attached?

A. Well, the broken part of the thread fitted the broken thread on the piping that was up there.

Q. What pipe are you speaking of? Does that show in Exhibits 12 and 15?

A. Here is the pipe there, with the white lead on it.

Q. You show me on Exhibit 15 a pipe in a horizontal position, at which an arrow has been drawn, and the words, "drain line", above; is that right?

A. Yes, sir; that is, the thread on this, as near as we could see, fits the thread that is remaining on the valve.

Q. The thread on the open end of this pipe line that is indicated as the drain line? Is that right?

A. No, a broken thread never breaks square off; it has always a zigzag in it somewhere.

Q. And is that the same line that is indicated by an arrow?

A. Yes, sir.

Q. In Libellant's Exhibit 12?

A. There is the white lead on the end of it.

Q. What was that drain line, can you tell us?

A. Well, it is the same size pipe as that; iron.

Q. Well, this line that you have referred to as the drain line, just tell us what it was; what it is connected with. Can you tell us that?

Mr. Underwood:

May I interrupt to ask whether the witness said it was iron?

A. I believe it was iron.

Q. Can you tell us what it was, Captain?

A. I never scraped it, but if I can have that valve and my knife, I can tell you what it is.

The Court:

Not the material, what did you,—what did it connect with?—

A. Well, these valves connected with the drain line.

Q. What did the drain line connect with?

A. I should say the manifold.

Q. Did you see anything else of the equipment in the engine-room?

A. Well, I saw those two pipes; I signed the tag.

Q. I show you this Exhibit No. 2; is that one of the pieces of equipment you found in the engineroom?

A. Yes, sir.

Q. Where was that found?

A. As near as I can recall it, without looking at this tag, that was something I saw in the No. 2 tank.

Q. The threads are left projecting out of the valves on this Exhibit No. 2?

A. The brass nipple there, if you will let me read that tag I will be positive; but I am pretty sure that come from No. 2 tank.

Q. Did you make the writing on the tag?

A. No; that is my signature; I think that is Carl Holm's writing; he writes backhanded.

Q. But you signed the tag?

A. Yes, sir.

Q. Was that at the time the tag was made?

A. Yes, sir; that is the time when Holm brought the fittings out of the engineroom of the Seminole. That was right after the Coroner left.

Q. Did you see this in its original position?

A. No, that was later, laying on the floor of the engine-room. That is what I mean.

A. Yes, I seen it.

Q. You saw it lying on the floor of the engineroom?

A. Not its original position, but it was hooked on the No. 2 tank.

Q. How do you determine that? How do you know if it was hooked on the No. 2 tank?

A. Because No. 2 tank has a shutoff valve sheared off; it became distorted; and this section was laying right underneath No. 2 tank.

Q. Is this valve similar to the valves in the other tanks?

A. Yes, sir.

Q. And did you or did you not try this on the No. 2 tank to see whether it came from there?

A. No, I did not.

The Court:

What is the connection between that exhibit and what you call the manifold, which you said the drain pipe came from?

A. Well, that,—these all go down to a manifold pipe, as I recall it, each one of the tanks had one of these valves; so if your valves were tight and the nipple was tight, you could shut off any pipe you wish. For instance, run on any particular tank. This goes into your tank.

The Court:

All right, where does this go?

A. I believe that goes into one line, as the manifold.

The Court:

Does that connect directly with the manifold?

A. Well, I don't know, to be honest, this was laying on the floor when I picked it up.

Mr. Underwood:

If your Honor would like me to, I would like to draw your Honor a very simple little sketch and show how this was rigged out.

Mr. Matteson:

I think this was part of the manifold, wasn't it?

Mr. Underwood:

I don't know whether it was or not.

A. That engineroom was a terrible wreck when I was in it.

The Court:

I think that would be a good idea; be glad to have that.

A. May I test this with my mouth?

Q. All right.

A. That is open; that was just for my own curiosity.

(Conference between Court and Counsel.)

(By Mr. Matteson):

Q. Captain, you were saying that this valve in your opinion was the valve that came off the No. 2 tank.

A. Yes, I believe so.

Q. And if that's the case, Captain, where would these fittings lead to from that valve?

A. As near as I can figure they were twisted around that way (indicating); come out here, and then went across and in and around that angle-iron, and this being straight it might have hooked onto to the valve on No. 1; I believe that is right.

Q. Then this series of piping and connections would be a part of the manifold connecting the tanks, would it?

A. Yes, I would say that it is. You see, sir, things were in such a mess there—



Q. This longest piece of pipe here appears to have been considerably bent, doesn't it?

A. That is the way it was picked up.

Q. Did you tell about this exhibit, Exhibit 17, where you found it?

A. I think that hooked into the manifold; that has a strainer from there; it went to the main engines and possibly to the auxiliary, on one or the other.

Q. Where was it found in the wreck?

A. I don't recall. Wouldn't it show on the tag?

Q. Can you refresh your recollection by anything on the tag?

A. "Feedline of port engine" it reads on here.

Q. Does that refresh your recollection as to anything?

A. Isn't there another tag on there; I signed all of these tags; I believe that went onto the manifold, or in close proximity, or over close to that small generator. I think one of these lines was the feed line to the port engine and the other one to the little generator.

Q. When you say "feedlines" to the port engine and the port generator, you mean the branching lines came out of the lower part of the strainer?

A. Yes, it has to come through that side of the feed—

Q. Did you observe the tanks of the Seminole while you were there?

A. Yes.

Q. What did you observe with respect to the tanks?

A. Tanks 1, 3 and 4 were practically in position, but the No. 2 tank was out of position. The photographs show that.

Q. I show you this picture, Libellant's Exhibit No. 6, which was taken sometime later; can you tell me whether that represents the position of the tanks at that time or not?

A. Yes, and also at the present time.

Q. No. 2 tank is displaced?

A. Yes, out of place a little bit; and this one (indicating) is slightly out of place.

Q. No. 1 tank?

A. You can see that they don't quite line up with the eyes; the fire or explosion threw them out of plumb.

Q. Were they in that position the first time you saw them?

Mr. Underwood:

I move to strike out what the witness said the explosion did.

The Court:

I think you are technically right. I will grant your motion.

(By Mr. Matteson):

Q. That is the position in which they were when you first saw them, is that right?

A. Yes.

Q. And that is the position they are still in?

A. The last time I looked at them.

Q. Will you describe these tanks to us as you saw them?

A. I measured them; they were approximately 72 inches in height and 42 inches in diameter; they were galvanized steel riveted tanks and they had convex bottoms and crown tops.

Q. Were they riveted tanks?

A. Riveted, yes.

Q. Were either the tanks or the rivets welded?

A. No; I couldn't see any welding on them.

Q. Did you observe the compartment in which the tanks were?

A. Yes, sir.

Q. Will you tell us what you observed about that, as to the dimensions of this compartment and how these tanks were placed in there.

A. The tanks set in there pretty snug; the No. 4 tank was practically contacting the angle-iron alongside the—

Q. That would be the starboard side?

A. Yes.

Q. What angle-iron are you referring to?

A. That side of the angle-iron (indicating).

Q. Would that be on the starboard side aft of the compartment?

A. Yes, on the inside of the bunker.

Q. What else did you observe about its dimensions?

A. The space between the tanks was possibly five or five and a half inches, except on No. 1 tank; between the No. 1 tank and the port bulkhead there was about 12 inches or possibly 14 inches space there, and the floor of that space I imagine about 3 or 4 inches there, forward and aft of them—

Q. Did you take any measurements of the width and so forth of the tank compartment?

A. Yes, but I do not have it in my mind clear.

Q. Does this memorandum refresh your recollection (handling document to witness)?

A. Yes. That compartment, I think, was 43 inches.

Q. From forward to aft?

A. Yes.

Q. How did you get that measurement?

A. With a steel tape.

Q. How did you go about getting accurate measurements of that compartment; is the Seminole destroyed now?

A. Yes, but I took it from the ends which are not destroyed. There may be a slight error in it, but this will give you a pretty close measurement.

Q. You measured the distance from forward to aft and it was 43 inches?

A. Yes.

Q. What was the diameter of the tanks?

A. 42 inches; they were pretty snug.

Q. Then how much room would that leave forward and aft?

A. It is pretty close. I was wrong on the other. They were pretty snug in there.

Q. What do you mean by "pretty snug"; how much space would there be?

A. There wouldn't be more than an inch at either end.

Q. Will you tell us what you observed with respect to this tank compartment and the tanks and the situation in which they were placed, as to whether or not those tanks could be inspected in position?

A. You mean to inspect all parts of the tanks?

Q. Yes.

A. You couldn't do that without taking them all out of there.

Q. Why not?

A. There wasn't room.

Q. No room to get in there, you mean?

A. No, sir. You might possibly squeeze in the corner of No. 1 tank, but as far as the other three tanks is concerned, sir, it would take a pretty thin man to get down between that fore and aft bulkhead on the No. 1 tank.

Q. Could the tanks be inspected from underneath?

A. I looked in there and it appeared to me to be metal on top of angle-iron, but you could see pretty clearly all the bottom of No. 1 tank. I just looked in there out of curiosity at the time.

Q. When was that; right after the fire?

A. No; that was a couple of months ago.

Q. Captain, in view of your experience as a practical man and as a surveyor of vessels, what can you tell us about the propriety of installing gasoline tanks in an

compartment such as that in a position where they could not be properly inspected.

Mr. Underwood:

I object to that; that is a hypothetical question. No foundation has been laid and all the facts have not been stated.

The Court:

The objection is overruled.

A. I don't think they were properly installed; in the first place, they are not gasoline tanks; they are water tanks.

Q. I will get to that in a minute, Captain. I was dealing now with the question of inspection. Do you consider it proper practice to install these tanks in such a position that they cannot be readily inspected?

A. No, I don't think so.

Q. Did these tanks have any facilities for interior inspection?

A. There was no manhole plates that I could find.

Q. In your opinion were they proper tanks for the storage of gasoline?

A. Well, sir, they looked like water tanks to me.

Q. For what reason were they not suitable for the storage of gasoline?

A. Well, I think the only proper tank for gasoline boats is a steel tank, a welded job.

Q. Is there anything else?

A. These tanks were riveted; the seams were not caulked, and they had a crown in the bottom which certainly would collect condensation.

Q. How would this crown collect condensation?

A. It had that "V" all around the bottom edge of it.

Q. When you say "crown" in the bottom, Captain, you mean concave surface?



A. Yes.

Q. And that crown would leave a "V" around the interior on the inside?

A. Yes.

Q. What is the objection to that?

A. Well, that is where all of your condensation would accumulate and in time rust through.

Q. In your opinion, Captain, if such tanks were used for storage of gasoline over a period of approximately fourteen years without being taken out for inspection, do you think that these tanks would remain tight during that period?

A. I would say after fourteen years they are on the verge of being useless as tanks. I have had these iron tanks for drinking water and they would go bad in six or seven years.

Q. I want to ask you about this Exhibit 2. First of all I think I will ask you about this Exhibit 11. I think you said this was attached to a drain line which attached to the gasoline manifold of the Seminole?

A. At one time.

Q. But this had evidently been attached to that line?

A. Yes.

Q. I would like to ask you, Captain Patten, in the light of your experience, as a surveyor and a practical man, whether it is proper to have draw-off lines and valves for the purpose of drawing off gasoline in the engine-room of a gasoline vessel?

A. No, sir; it should not be in there.

Q. What do you base that on?

A. Well, in the first place, on common sense; I know the danger of it; in the second place, it is a rule of the National Board of Fire Underwriters and the National Board of—

Mr. Underwood:

I object to the reference to rules of the National Board of Fire Underwriters, or any Board. In the first place, these rules are the best evidence, and I think that they ought not to be gotten into this record in this backhanded way, if at all.

Mr. Matteson:

I am asking him about the authorities on which he relies, and I will produce copies and have him identify them.

Mr. Underwood:

If your Honor please, this man was asked, as I understand it, to express his opinion. Perhaps that is all right, however, I do not think that any rules ought to be incorporated in his answer to such questions which calls for his opinion alone.

Mr. Matteson:

If your Honor please, he has not had an opportunity to state what the rules are. I want him to describe them and then—

The Court:

I think you can go into that. I will overrule the objection. In other words, he is basing his opinion partially on the rules accepted by him. I think we will inquire into that. I will overrule the objection.

Mr. Matteson:

Read the last question.

(Preceding question read by the Reporter as above recorded.)

A. Shall I state that?

Q. Yes.

A. National Board for the Prevention of Explosion and Fire on Motor Boats; the New York Board of Underwriters; New York Police Department—

Q. Before we go any further, Captain, you have referred us to certain rules—

The Court:

You can strike out all of that with reference to the rules of the Police Department of New York.

(By Mr. Matteson):

Q. You referred to certain rules, Captain Patten, of the Board of Fire Underwriters, and another organization—

A. National Board For Prevention of Fire and Explosion on Motor Boats?

Q. Yes.

A. All right.

Q. What are those rules; just generally tell us where they come from and what they are.

Mr. Underwood:

If your Honor please, I object to that. The rules are the best evidence themselves; and, such as they are, they come in books, and I think that the organization which purports to make the rules ought to be known to your Honor first.

Mr. Matteson:

That is exactly what my question is addressed to.

Mr. Underwood:

Perhaps I didn't understand it. I thought you were asking him to tell what the rules were.

Mr. Matteson:

No; I am just asking him to tell where they came from and what organization or authority—

The Court:

He may answer that.

A. These rules are drawn up by committees of experts and are recognized—

Mr. Underwood:

Let him say where they came from. I don't mind that, but as to how they are recognized—

The Court:

Don't tell the fact of how they are recognized; just tell who issued them.

A. All of these rules are for the prevention of explosion, and also governing the proper installation of all pipe lines, tanks and exhaust lines.

The Court:

Are they printed rules?

The Witness:

Yes.

The Court:

Do you have a copy of them?

The Witness: —

Yes.

(By Mr. Matteson):

Q. Are these rules that you have speaking of (handing document to witness)?

A. Yes; this is one set of rules, and then we have others—

Q. These regulations govern Marine Fire Hazards and were issued by the National Fire Protection Association in 1930, is that correct. I am now working on a later book. Of course I try to keep up to date on them.

Q. There is a later edition that you have?

A. Yes.

Q. What is the date of that edition?

A. 1933.

Q. And this is the edition of 1930 I have here?

A. Yes. <sup>2</sup>

Q. Of course the one you have in your hand now was issued after the fire?

A. Yes.

Q. And these 1930 rules are the ones that were in effect at the time of the fire?

A. Yes, and possibly some more, because that is five years previous to the fire.

Mr. Matteson:

I offer these rules in evidence.

Mr. Underwood:

If your Honor please, I object to them on the ground that they are not rules promulgated by any official or authoritative body. They merely include the opinion of certain people who are not here and not subject to cross-examination, and I object to them on the ground that they are not binding on the Respondent I represent.

(Extended legal discussion.)

The Court:

Well, this is largely a practical matter and I shall follow this rule: that the rules themselves are to be regarded as



a criterion, the observance of which and conformity to which is governed; then the strict rules of evidence must be applied with reference to the adoption of the rules and as to whether they govern and as to whether they are binding upon the Respondents, but I think the witness, as regards this examination, can refer to certain printed rules and tell what he knows about the adoption or the conformance of these rules, and explain wherein he thinks a rule is right or wrong as applies to this particular field. Now, if the printed rules are offered in evidence, they are not offered as binding because they are adopted by that association, but they are only offered as a set of printed rules to which the witness gives credence.

Mr. Matteson:

That is exactly the purpose for which they are offered.

The Court:

If there is any exception to that line of reasoning, you may take an exception. I want you to have the benefit of your objection, and you may have your exception.

Mr. Underwood:

May I make now my objection to all of this, so I won't have to interrupt the Court from time to time?

The Court:

All right.

(Thereupon printed pamphlet entitled "Regulations Governing Marine Hazards" was marked Libelants' Exhibit No. 97.)

The Court:

Mr. Matteson, in ruling with you I do not want you to get the record confused now. If your offer is not in ac-

cordance with the views I expressed, I prefer you to state it now, because I do not want to mislead you.

Mr. Matteson:

It seems to me that your Honor's statement of it is excellent and it coincides with our theory of the matter.

(By Mr. Matteson):

Q. We were speaking of the matter of outlets on gas feedlines in an engineroom. Can you refer us to the Section of these rules of the National Fire Protection Association that relates to that?

A. Do you wish me to read it?

Q. Yes; read it to us.

A. I will read it all; I want to read it all. It is page 47; paragraph (g).

Q. And that reads, "Outlets on Gas feedlines for drawing loose gasoline for any purpose whatever are prohibited in the engineroom compartment." Is that right?

A. Yes, sir.

Mr. Underwood:

Do you want to read the rest of the paragraph?

Mr. Matteson:

I have no objection. It reads, "Drains in the bottom of fuel tanks are not recommended, but where fitted shall be closed by plugs or plugged pipes threaded into spot faces, riveted and soldered, welded or brazed to the tank".

(By Mr. Matteson):

Q. Now, Captain, I would like to ask you whether or not this rule is in accordance with your experience and your opinion of what is required.

A. Yes, sir.

Q. Of what is proper. . .

A. Yes. That is the first thing I look for going aboard a boat.

Q. Are you familiar with this document which I show you now?

A. Yes, sir.

Q. And what is that?

A. Well, since Pilkington's fire—I will have to explain the whole thing in there. That is a safety regulation.

Q. I don't want to go into anything since the Pilkington fire.

A. All right.

Q. Just tell me what that document is.

A. It is a lot of safety regulations recommended by the National Board of Fire Underwriters for the Prevention of Explosion on Motor Boats, and they requested me to have two copies of this posted in all boatyards in South Florida, which has been done.

Q. Is that an authority that you respect in your work?

A. I certainly do.

Q. By whom are these rules issued or signed?

A. National Board of Fire Underwriters, signed by A. C. Hutson.

The Court:

I shall follow the same ruling that I announced in regard to the other. What the witness said with regard to his instructions about posting these rules and, whether or not they were posted, is stricken on the Court's own motion, without suggestion of the objection made by the proctor for the Respondent. You may examine the witness as an expert with regard to the particular matter of the presence of the drain pipe in the engineroom, and he may give his opinion, and if it is his opinion which he fortified with the adoption of these rules, as well as the other rules, he may state it, but the binding effect of these rules on the Respondent is not meant to be maintained by

that rule. He may be examined in regard to the rules in that light.

Mr. Matteson:

Very well.

The Court:

It is twenty-five minutes past twelve. We will recess until two o'clock.

(Recess taken until 2:00 P. M., March 22,—same day.)

March 22, 1939, 2:00 o'clock P. M.

Convened pursuant to recess.

Appearances same as heretofore noted.

1023 Thereupon: J. N. PATTEN, a witness produced by the Libelants, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Continued).

By Mr. Matteson:

Q. Captain, I think about the last question I asked you was about these rules signed by the Chief Engineer of the National Board of Fire Underwriters. I would like to ask you this further about them: do you or do you not regard these rules as expressing a standard of approved practice for safety on motor boats?

A. I do.

Q. We were discussing the matter of drain valves for drawing off gasoline in the engineroom. Is there anything in these rules on that point?

A. Yes, sir.

Q. What do the rules say on that point?

A. May I read it?

Q. Yes.

A. "That all outlets for drawing gasoline for any purpose whatsoever be prohibited in enginerooms".

Q. Referring to page 2 of Libelants' Exhibit 24?

A. That is right.

Q. Captain, you expressed the opinion that it was improper to have a drain line for drawing off gasoline in the engineroom. Will you tell us why you consider that improper?

A. If the drain line is used it is impossible to draw off gasoline into any kind of receptacle in an engineroom compartment without creating more or less explosive mixture in your engineroom?

Q. Any other reason?

A. You might have bad valves; there may be carelessness in closing the valves, and vibration might crack off a line in the threads; you might have a slow seepage from the connection.

Q. Is there any danger to the vessel in connection with slow leaks such as you have described?

A. Yes. Gasoline being heavier than the atmosphere, the air naturally goes to the bottom and goes into the bilges and fumes cause pockets.

Q. What is the difficulty about that?

A. Unless you have proper ventilation the air pushes down into the bilges and stirs up these air pockets, and that gives you a bad explosive hazard.

Q. How explosive is gasoline; can you tell us?

A. I would say it is worse than dynamite, judging from some of the explosions I have seen.

Q. Is that known to be a serious hazard on boats using gasoline?

A. Yes.



Q. I want to show you these valves and connections, Exhibit No. 11, and ask you, irrespective of the matter of having such a draw-off line in the engineroom, whether you consider that a proper set of valves and connections for a gasoline line?

A. No, I wouldn't approve of that valve for gasoline.

Q. What is the matter with it?

A. Well, the surface of the valve seat is flatter than I would like; I would like a more sharp needle plug valve, so if any sediment gets in there on the valve seat it will fall right down there.

Q. If the pitch of the seat is sharper?

A. Yes, sir.

Q. Is there anything else that you note about this set of valves and connections?

A. I noticed yesterday that the valve itself was badly pitted and corroded.

Q. Will you show us what you mean by that?

A. This (indicating) is all corroded in there; there should be a ground joint to make—in other words, one pipe. There is a chip out of there. What I mean is that this seat should come down smaller than that, come down to a point. That would make it more readily closed and would make it tighter, a tighter joint for gasoline. This is a water valve, I should say.

Q. What is the requirement of a water valve or steam valve and a gasoline valve?

A. There are different kinds, a hundred different types of valves; some are used for water, and high pressures, and gasoline gate valves have—

Q. What I was asking you, Captain—I gathered from you that there is some difference in the requirements for a water valve and a gasoline valve. Why doesn't the ordinary water valve do for gasoline?

A. You can get a water valve with a fiber insert in the valve—

Q. We are not talking about that kind of a valve. Do you consider that there is some difference in the requirements between water valves and gasoline valves?

A. Yes.

Q. What is that difference?

A. I would prefer that type of valve, what they call the needle plug valve, because the seat is tighter.

Q. Now is there anything you noticed about this set of valves and connections than that which you have called our attention to?

A. I don't know much about that valve. We couldn't get the bottom out of it. There is a union and a nipple in there, and a reducer, making up these two valves that are used; they use five fittings on them and it could have been done by one three-inch nipple.

Q. What is the difficulty about them having more or less fittings?

A. The more fittings you have the more liable you are to have leaks.

Q. In the photographic exhibits you identified the drain line running amidships off to starboard?

A. Yes.

Q. Do you see any evidence of any supports for that line?

A. No.

Q. If the line had no support what would be the effect of that?

A. You would have the whole weight of these valve fittings on the length of pipe on that elbow.

Q. What difference would that make?

A. In time she would crack it off.

Q. Would it make any difference in the question of whether it would be likely to leak or not?

A. Well, without any support the weight of these valves would certainly have a tendency, if not to crack off the threads, to at least loosen them up and you might have a slow seepage.

Q. When you speak of slow seepage with respect to gasoline, what do you mean Captain?

A. It wouldn't leak in the fitting or pipe; it wouldn't drop, but it would evaporate about the same speed as the leak, so it would be necessary to put your hand underneath the fittings to get that odor.

Q. Is such a leak readily noticeable?

A. Yes, it would be if you got down in the bilge.

Q. What do you mean by that, Captain?

A. Well, the evaporation of this seepage being heavier than the atmosphere, the air would naturally sink to the lowest point in the bilge.

Q. What I mean is, Captain, if you looked at it would it be readily noticeable?

A. Not unless you wiped it with your fingers.

Q. I show you exhibit No. 2, a valve with a series of connections on it, and I would like to ask you whether you consider that setup a proper one for a line for the conveyance of gasoline in a gasoline vessel?

A. No, sir. It seems to me that they could go from the No. 1 tank to No. 2 tank valve with copper tubing and have saved all of these fittings.

Q. In your opinion, Captain, how should a gasoline line for the conveyance of gasoline in the engineroom of a gasoline boat be constructed?

A. In one section from tank to carburetor, or tank to tank; no more fittings than absolutely necessary.

Q. What material should be used?

A. Annealed tubing.

Q. Why does the use of annealed copper tubing avoid the use of too many connections?

A. Copper tubing can be bent more readily than brass or iron pipe.

Q. Will you explain to us what annealed copper tubing is?

A. Copper, when rolled into shape, is pretty hard, but when you anneal it it makes it very soft and you can bend it around pretty easy without disturbing its strength.

Q. Does that welding process bring out that condition?

A. It makes it softer.

Q. Is that what you mean by annealing?

A. Yes.

Q. Captain, is there anything in these rules of the National Fire Protection Association, Libelants' Exhibit 97, that supports your view on that point?

A. Do you wish me to read it?

Q. Just answer the question.

A. Yes.

Q. Now read it.

A. "All fuel piping shall be seamless drawn annealed copper tubing or I. P. S. copper pipe".

Q. What kind of fittings should be used on pipe of that kind, screw fittings or some other kind?

A. I like the ones where you expand the ends of the copper tubing, special fittings.

Q. Is that your opinion of what should be used?

A. Yes, that is what I like to use.

Q. Is there anything in these rules to support your opinion on that?

A. Shall I read it?

Q. Yes.

A. "Fittings and connections for tube shall be at least equal to the solderless type of the S. A. E. Standard Practice Code and for pipe, with the exception of ground unions, shall be standard pipe threaded and soldered. All valves, cocks and pipe for tube fittings shall be of non-ferrous composition."

The Court:

Let me see that a minute.

Mr. Underwood:

The section begins on page 46, and he was reading on page 48.

The Court:

I do not understand all of that. I suppose you can argue that to me later.

(By Mr. Matteson):

Q. If annealed copper tubing were used for a gasoline pipe would it be necessary to have a lot of connections such as we have on Libelants' Exhibit No. 2?

A. No, sir. From points A to B there would be just the two connections.

Q. And I think you said that could be bent around any obstruction or angle?

A. Yes.

Q. I would like to have you look at this fitting again, Exhibit 2. I will ask you what else you note about that exhibit?

A. I know this valve is not tight when it is shut.

Q. Do I understand that you shut this valve tight and blew in it?

A. No, sir; I sucked on it. Where you hold your lip it is fairly tight.

Q. You say it is not tight in its present condition?

A. It is not.

Q. What else do you notice about it?

A. This union has been used before.

Q. I am not anxious for you to draw any conclusions, Captain, but just tell me what you know about its condition.

A. These threads on it are expanded, which shows that this pipe—the threads of this pipe have been turned up so far that the nut is ground inside of it, and has expanded—



Q. A fitting like that, Captain, can you tell me how inside of it is in its original condition; is the threaded female part of the inside in its original condition, or has it deteriorated or not?

A. This part (indicating) is inlaid. This proves that (indicating); that is the way it should be, and this (indicating) should slip over there readily. Do you see where it is expanded? You can see that very easily. You can't get that part of that union back.

Q. You are speaking now of the nut end of the union?

A. Yes. That is as far as that goes. That shows that the pipe has been screwed in there too tight, expanding this section in here (indicating).

Q. What else do you notice about that union and about its condition?

A. If I was to use that union again I would want to grind that nut before fitting it on a pipe joint.

Q. I call your attention to the end of the union where there are a number of marks which look as if they might be cracked; what is that?

A. I would want to scratch that off with a knife before I gave any answer on that. That looks like the teeth of a Stilson wrench.

Q. Captain Patten, from your observation of the Seminole what did you observe with respect to facilities for ventilating the engineroom?

A. The ventilation was all right for a steam plant but not for gasoline.

Q. Tell us what you observed with respect to the actual facilities.

A. Well, they had a window on each side, and about two 14 inch cowl ventilators leading down to the top of the engineroom ceiling; they didn't extend below that; they had a hatch and a skylight and a companionway.

Q. Is hatch and companionway the same thing?

A. I meant skylight and companionway.

Q. You said it was good ventilation for a steam plant but not for a gasoline plant. Explain to us what you mean by that.

A. Well, sir, for a steam plant, with the boiler in the engineroom, all you would need would be the intake of air, and intake of air to get to your furnaces; so long as your vessel got headway into the wind you got air. Some of these ventilators cause air pockets in your bilges, and you still have gas hazards.

Q. Do I understand that it is your view that ventilators should lead to the bilges of a gasoline vessel?

A. Yes.

Q. Why is that?

A. Gasoline vapor lays in all pockets between your frames, and it will stay there unless you get a circulation of air to stir it up and drive it out.

Q. Which is heavier, gasoline fumes or air?

A. Gasoline fumes; they always sink down—

Q. Is there anything in these rules that we have been referring to to support your opinion as to that. I show you the exhibit we have been talking about.

A. I have it here; isn't this it?

Q. No; that is a later edition. I refer you first to Libelants' Exhibit 24, and call your attention to what you see in that Exhibit which supports your opinion; what does it say?

A. "That three inch or larger ventilating pipes running down all the way to bilges be placed in all four corners of enginerooms."

Q. Do you notice anything else there that refers to it?

A. "No ventilation above, either at deck or sides will remove these vapors."

Q. Now in this exhibit, Libelants' Exhibit 97, the Rules of the National Fire Protection Association, what do you find there?

A. Shall I read all of these?

Q. Call our attention to the part which you consider pertinent.

A. "Ventilation: Any compartment or space in which a motor is located, particularly the lower portion and bilges, shall be provided with ventilation effective to remove all accumulation of flammable or explosive vapor. Tank compartments should be similarly ventilated when practicable." Shall I continue on?

Q. Yes, if it is pertinent.

A. "To meet this requirement, the following is recommended: Where motors and/or tanks are in compartments; permanently open and adequate inlet and outlet ventilating ducts extending to the bilges should be installed; two inlets leading to the wings at one end of the compartment and two outlets from the wings at the opposite end."

Q. The rest relates to motors and tanks not in compartments, does it not?

A. Yes.

Mr. Underwood:

Read the next paragraph.

The Witness:

"Where motors and/or tanks are not in compartments; at least one such duct should be installed in the fore part of the boat and one in the after part. Inlet ducts should be provided with cowls or equivalent fittings." Shall I read on?

(By Mr. Matteson):

Q. Yes, you might as well finish it.

A. "Where feasible, it is also recommended that: Outlet ducts be fitted with wind-actuated self-trimming or rotary exhaustor heads; or that power or hand operated blowers be fitted in each inlet duct or exhaustor in each outlet duct. If power exhaustors are used, motors shall

be of approved explosion proof type installed outside of the ducts."

Q. Now does that statement coincide with your opinion?

A. Yes, sir.

Q. Was there any facility for ventilation in the tank compartment of the Seminole?

A. Not that I could see. except the bottom—what do you call that—when she was a coal burner there was a hole in the coal bunker, and possibly a hole under No. 2 tank in the bottom, and what was overhead I don't know.

Q. This hole in No. 2 tank, what was that?

A. When I looked in there I could see what appeared to be metal under the tanks; all of the tanks, excepting a portion under No. 2 tank, where you could look up and see the concave part of the tank.

Q. That made an opening between the upper part of the—

A. It made an opening from the bottom of the tank compartment; that was in the engineroom where they would shovel the coal out.

Q. That was a little square opening in the forward head of the engineroom compartment?

A. Yes.

Q. That simply led into the engineroom itself.

A. From the tank compartment, yes.

Q. Can you point out this coal door that you spoke of in this picture, Libelants' Exhibit 9?

A. Yes.

Q. That is the dark area with the line drawn from it and with the letter "A" at the top?

A. Yes, leading from the floor up—

Q. Where was this engineroom floor; was it above the skin of the ship?

A. I think the skin of the ship was about 36 inches below the bottom of the tanks, as near as I could judge, and this floor is a little lower.

The Court:

I am afraid I have got the wrong idea in mind as to what the skin of a ship is; what is the skin of a ship?

The Witness:

That is the plating on the bottom; it is the plating on the frame; that is what we call the skin of a ship.

(By Mr. Matteson):

Q. Do you call the bilge part of a ship that part which is under the lowest floor in the ship?

A. Yes.

Q. Then this opening from the engineroom into the space under the tanks, would that be above the bilges?

A. Yes, above the bilges.

Q. Do you consider that the tank compartment was properly ventilated under these circumstances?

A. I don't know what was up above there; that was all blown off; she may have had ventilators up there for all I know.

Q. Assume for the moment that there was a solid roof over the top.

A. Well, any heavy gas in there would come out and go down in your bilges, and as to the ventilation, ventilation of that tank compartment, assuming that it was solid up above, then naturally there would be no ventilation in your tank compartment except this hole underneath there, this coal hole—

Q. My question was, Captain, do you consider that proper ventilation?

A. No, sir, unless you had a couple of ventilators up on deck.

Q. If those ventilators were on deck and did not come below the deck, would that serve the purpose?

A. Well, they might have one at the bottom and one at the top, which would make proper ventilation.



Q. Did you see any evidence of that when you were there?

A. That was all gone when I looked around her.

Q. You spoke of windows in the engineroom. Have you made any measurements of the dimensions of any of those windows?

A. Just the one leading to the alleyway, as I recall it.

Q. How were you able to do that?

A. I got gross dimensions; the woodwork was already burned away; I measured the part of the steel bulkhead that was left.

Q. What were the dimensions on that?

A. 24 by 36.

Q. That is the size of the opening in the plating?

A. In the plate.

Q. In which the window was placed?

A. Yes.

Q. Which was the longer dimension; the upright or the lengthwise dimension?

A. Up and down was the longest.

Q. Where was this hole in the plating, in the side of the plating, with reference to the deck?

A. Right up to the bottom of it.

Q. So the bottom of that opening would be 36 inches from the deck above, is that right?

A. Yes.

Q. I show you this picture, Captain, and ask you if that is a picture you took; did you take that picture?

A. Yes.

Q. What does that show?

A. That is that window there (indicating).

Q. That shows a window?

A. What was a window, yes.

Q. Is this (pointing) in the background of the picture the original state of the engineroom along the way of the alleyway?

A. I believe it is.

Q. It was distorted like this by the accident?

A. That was worse than that; it was worse than that, it seems to me.

Q. Is that what was left of the bulkhead at the time you took this picture, showing the window opening in the bulkhead?

A. Yes.

Q. Is that the opening that you measured?

A. Yes; there seems to be kind of a kink in that there (pointing).

The Court:

Is that a window on the starboard or port side?

The Witness:

Starboard side alleyway.

(By Mr. Matteson):

Q. This window opening that you measured, Captain, was that in the starboard side of the engineroom?

A. Yes, leading to the alleyway.

Q. Was that the only opening in the starboard side of the engineroom leading to the alleyway?

A. Yes, sir.

Q. I show you another picture, Captain, which has been handed to me by Mr. Underwood; do you recognize that?

A. Yes.

Q. Does that show the window?

A. Yes.

Q. Are these two parts that I indicate here and here (indicating) the bulkhead separating the engineroom from the alleyway?

A. Yes, sir.

Q. Separating the engineroom from the alleyway?

A. Yes.

Q. I will mark each of these parts with a cross. Between these parts is that opening or the window that you were speaking of?

A. Yes.

Q. I will mark the corners with the letters A, B, C and D; is that right?

A. That is right.

Q. The alleyway is on the starboard side of that bulk-head?

A. That is right.

Mr. Matteson:

Now I offer this photograph in evidence, if you do not mind.

Mr. Underwood:

No objection. That is why I gave it to you.

(Photograph above referred to was marked Libelants' Exhibit 98.)

(By Mr. Matteson):

Q. Captain Patten, I want to ask you this: In your opinion would it be proper to leave the engineroom of a boat such as the Seminole as you saw it with the skylight and the hatchway closed and the two windows closed, and only the two cowl ventilators open, when laying up for a period of two months or more in the summer-time in this climate?

A. Would it be safe?

Q. Yes.

A. You mean safe from explosion?

Q. I asked you whether that would be proper and safe, whether it would be the proper and safe thing to do.

A. I would recommend better ventilation than that.

Q. Do you consider that it would be properly ventilated?

A. No, sir.

Q. What, if any, danger would be involved in that?

A. Well, it would cause—there would be a possible accumulation of explosive gases in there.

Q. Why do you say "possible accumulation of gases in there"?

A. So many slow leaks or seepage and leaky valves.

Q. Assuming that when the boat was laid up no leaks were apparent. Would that make any difference in your opinion?

A. It should be ventilated anyway.

Q. Why?

A. To keep any possible fumes out of her bilges or engine room.

Q. Assuming that the boat had been laid up in that condition for a period of two months, do you consider that it would be prudent for anyone to go into the engine room and strike a match or throw an electric switch?

Mr. Underwood:

If your Honor please, I object to that on the ground that it is usurping the function of the Court; after all, that may be the thing the Court has to decide as to whether or not it is negligent.

The Court:

I will overrule the objection.

A. No, sir.

Q. Why not?

A. I don't think it would be prudent if it were closed up for two days to go down and throw a switch without opening the hatches, the windows, and ventilating it.

Q. Why not?

A. Because it is a gasoline boat; there is always the possibility of leaks in gasoline lines. I urge them every day in my life to ventilate your boat before you "tramp"

on a starter. It is not like an automobile, because you have a close compartment in there with possible gasoline fumes down there.

Q. Captain Patten, can you tell us whether or not a knife type electric switch will arc when it is closed, in the operation of closing it?

A. Yes; it arcs in either closing or opening; you get a much greater arc when you pull it open.

Q. As far as gas or gasoline explosions is concerned, Captain, does it make any difference whether the arc is a big one or a little one?

A. No; the smallest spark will set off the proper mixture of gasoline.

Q. Captain, would it make any difference in your answer whether or not you actually smelled gasoline in going into the engineroom or not?

A. Not necessarily; you might have a gasoline mixture that you couldn't detect with your nose, but if you knelt down or laid down on the engineroom floor, it might be pretty strong.

Q. Why is that?

A. Because it is heavier than the air, and it sinks.

Q. Captain, did you see Mr. Riley while you were at Fort Lauderdale at the time of the fire?

A. Not at the time of the fire, but I think he was there the next day.

Q. Did you meet Mr. Riley at that time?

A. Yes, sir.

Q. Did you have any conversation with Mr. Riley at that time?

A. Just a short conversation; he told me he was Mr. Phipps—

Q. Answer it yes or no.

A. Yes.

Q. Will you tell us what that conversation was?



Mr. Underwood:

I object to that on the grounds heretofore stated with reference to several conversations.

Mr. Matteson:

I assume it is subject to the final ruling of the Court.

Mr. Underwood:

I also object to it on the ground that it is after the event.

(By Mr. Matteson):

Q. Before you answer, Captain Patten, tell us when that conversation took place if you can.

A. It was the day after the fire or the following day.

Q. Now, Captain, will you tell us what the conversation was?

A. Am I allowed to say what he said?

Q. Yes.

A. I was standing there near the east end of the shed on the ground, and this chap was there and he struck up a conversation and said, "I am Mr. Riley; Mr. Phipps' secretary." I remarked that it was a pretty bad affair about blowing up this Captain", and he said that if he had not been busy that he would have come up with Captain Thomas and this thing would not have happened. We talked about the possible loss there, how many boats were lost, and so on; it was just a few minutes that we talked; there wasn't any great conversation.

The Court:

You make the additional objection that that occurred after the conflagration?

Mr. Underwood:

Yes, your Honor.

The Court:

I will let the ruling stand. If you want to argue that on the final hearing and raise that question, you may do so. The way it stands now I have ruled on it subject to your urging that objection at the final hearing.

(By Mr. Matteson):

Q. Captain, did you observe the condition of these valves constituting Exhibit 11 at the time when they were first found in the Seminole wreck?

A. Yes, sir.

Q. Will you tell us just what occurred when they were found and what you observed?

A. Carl Holm picked this one up and the other one too.

Q. When you say "this one" are you referring to Exhibit 11?

A. Yes.

Q. Just tell us about that.

A. These twin valves and the other two exhibits I think he handed them to me up on the steel wreckage—then we took them over to Captain Pilkington's house where we got tags; somebody suggested that we had better put tags on them for identification, that they might be used at a later date. So I asked Holm if they were tight, and he put a tongue suction on it, and I tested it the other way, and I found that you could suck through it, in fact, blow through it and you could feel it on the other side of your hand.

Q. Was there anything done to determine actually to what extent the valves were open or closed?

A. Before anything was done with them I went to get a centerpunch to mark them, and we couldn't find a centerpunch, so we took a hacksaw and put a hacksaw mark in the gland and the valve stem.

Q. Can you show us the hacksaw mark that you have in mind?

A. Here it is (indicating).

Q. Did you determine at that time in what condition the valves were when they were found?

A. No, we didn't take them apart or anything like that.

Q. I mean with respect to being open or closed.

A. After we found that we could blow through them, that is, by exerting a lot of power, because these had been under water and the packing had swelled—we could turn them about one-third of a turn, which we did, and then we put it back to the original hacksaw mark.

Q. Did you mark them with the hacksaw mark before you turned them?

A. Yes, before we did anything with them.

Q. And by turning it you determined that—

A. That they would open about one-third of a turn.

Q. In other words, from the position you marked with the hacksaw you had to turn the valve about one-third of a turn to the right in order to reach its closed position, is that right?

A. Yes.

Q. With reference to this valve, which is a part of Exhibit No. 2, did you determine whether that was open or closed at the time it was found?

A. Yes, but I don't recall whether we marked that or not. Yes, there is the hacksaw mark on it; there is the hacksaw mark there, but you have got to get a better light than this to see it. On the gland there you can see the hacksaw mark, but you can't distinguish where it is on the stem.

Q. Was it open or was it closed when it was found?

A. This one I believe was open; yes, this one was wide open; there is the mark there is your stem; I have got my fingernail in it and there (indicating) is your hacksaw mark in the gland.

Q. As I understand it, Captain, that was found and marked in a wide open position, is that right?

A. Yes. We made no attempt to change the position of the valves until after we had marked them with the hack-saw blade.

Q. Did you notice anything with respect to the carburetors in the engineroom of the Seminole?

A. No shut-off valves at the carburetors.

Q. Did you notice anything else?

A. No backfire arrestors on the carburetors and the two generators.

Q. Anything else?

A. At one time she had a round glass gauge in her, but that was destroyed by the fire.

Q. Captain Patten, you have mentioned several things here, and now I want to ask your opinion about them: is it or is it not proper to have a round glass gauge for measuring the gasoline in an engineroom of the type of a vessel like the Seminole?

A. No.

Q. Why not?

A. It is subject to breakage.

Q. Anything else?

A. I have noticed that engineers in the past few years put round glass gauges in with a rubber washer which will in two or three months disintegrate from gasoline and that will cause a leak.

Q. Referring to the rules that we have had under discussion, Captain, can you tell us whether under those rules glass gauges are permitted in the engineroom for measuring gasoline?

A. No, sir; they are forbidden.

Q. There is a provision on page 2 of Libelants' Exhibit 24 in that respect, is there?

A. Yes, sir.

Q. In Libelants' Exhibit 97 there is provision (K) on page 48, is that correct?

A. That is right.

Q. And do they support your view?

A. Yes, sir.

Q. Now, Captain, I want to go to the other thing that you mentioned, the shut-off valves at the carburetors. I understood you to say there were no shut-off valves at the carburetors.

A. That is right.

Q. Is that in your opinion proper practice?

A. No; you should have shut-off valves at the tanks and at the carburetors.

Q. Why?

A. You might have a shut-off valve at your tank which would have a slow leak, and you might have some dirt or grit under your float needle valve in your carburetor, and of course in time the carburetor will leak all of your gasoline into the bilges—small leaks, of course.

Q. Do the rules that you have been referring us to contain any regulation with respect to shut-off valves at the carburetors?

A. Yes, and the tanks too.

Q. Refer to Exhibit 24 and tell us where that is.

A. Here, it is (pointing).

Q. Where?

A. On page 3.

Q. Will you just read that to us?

A. "That there be a cut-off valve at each tank and at each carburetor."

Q. Can you find a similar provision in Libelants' Exhibit 97?

A. Yes.

Q. Where is that?

A. It is "I".

Q. Will you read that provision you have in mind, on page 47?

A. "Shut-off valves or cocks of approved type, such as those having ground seats or plugs, shall be placed in the supply line from tank. One valve shall be placed as close



to the tank as practicable; another as close to the carburetor as practicable. If shut-offs are of the cock type they shall be spring seated and provided with stops to indicate the open and closed positions."

Q. And the general purpose of these provisions is what?

A. Well, it is a matter of precaution; if your shut-off valve at the tank leaks you will still hold your head of gas at the carburetor; in other words, no carburetor in my opinion is leak-proof.

Q. Did you notice anything as to whether or not there were drip pans under the carburetors?

A. No, there was no evidence of any drip pan under any of the four carburetors.

Q. In your opinion was that proper practice?

A. No.

Q. Why not?

A. As I stated a moment ago, it has been proven by tests that there is no carburetor that is actually drip-proof; any carburetor, if it gets dirt in the needle valve or the float, will leak; therefore these screen drip pans are set under the carburetors to catch any possible small leak.

Q. What is the importance of that?

A. So that if you have a bowl of gasoline in your carburetor and the float is hung up, the contents of that bowl will seep through into your drip pan and remain there until such time as you start your motor, and then the motor will suck up that gas and clean out your drip pans.

Q. In other words, it prevents the dissemination of gasoline in the engineroom?

A. Yes; that is a temporary safety pocket for the gasoline until you wish to start your motor.

Q. Is there any provision in these rules, Exhibit 24, on that point?

A. Yes.

Q. Where is it?

A. Here (indicating).

Q. Read it.

A. "That drip collectors be well fastened under all carburetors. Openings should be properly screened with 40 mesh brass. A venturi pipe should lead from the bottom of this pan to the manifold, so as to keep this pan, as nearly as possible, free from gasoline at all times."

Q. What is this pipe leading back here (indicating)?

A. That is what we call the drain line; as soon as you start your motor it starts to sucking in the gasoline and—if there is any accumulation of gas in this drip pan and you start your motor, it is sucked up.

Q. Is there a provision in these rules, Exhibit 24, on that point?

A. I just read that.

Q. Is there a provision in these rules, Exhibit 97, on that point?

A. Yes.

Q. What page?

A. Page 49.

Q. Read it.

A. "All carburetors shall have integral therewith or properly secured thereto an approved drip collector. This shall be drained by a device for effectively returning drip to engine intake or discharging it overboard."

Q. Captain, one more thing. I call your attention to Exhibit 17, this device that has been referred to as a strainer, and ask you to look at the bottom of that device and tell me what you observe.

A. This (indicating) threaded end of the pet cock has evidently been broken off.

Q. Is that in your opinion a proper way to close a gasoline strainer?

A. No; there should be a solid plug in there.

Q. What is the difficulty when you put a pet cock or other threaded connection there?

A. It is well known that pet cocks work loose, and on a gravity feedline that would allow all of your gas to run into your bilges.

Q. How do you know that this is a threaded connection and not a solid plug?

A. Because a solid plug is not made that way; this is just a little pet cock that has been broken off there (indicating).

Q. And how can you tell that this was a pet cock?

A. If that was a plug it would be solid metal.

The Court:

How does the solid plug operate?

The Witness:

This stands right up here; this would be all right if you were out on a farm, and if your engine started to sputter—

The Court:

This (indicating) is the pet cock?

The Witness:

Yes. In my business, when I go on a boat, I recommend that the manifold pet cocks be solid brass plugs, that they have solid brass plugs in there, and if you have a solid plug in there all you would have to do would be to—

Q. You regard the use of a plug such as you have described as a safety precaution, do I understand?

A. Yes. If somebody went in there they would have to take that plug and it would cause a lot of manual labor, because the plug won't open itself.

Mr. Matteson:

That is all.

By Mr. Botts:

Q. Captain, referring to this exhibit No. 2, as I understand it this stem here is the shut-off valve between the tank and the manifold?

A. Yes, sir.

Q. The types running at right angles were a portion of the manifold?

A. Yes.

Q. So that if this valve, exhibit 2, was open then the gasoline supply from that particular tank would go into the gasoline manifold, is that correct?

A. Yes, sir.

Q. Now, Captain, it takes about two and one-quarter turns to open it and it takes about two turns to open it until it is in the position shown by the hacksaw marks?

A. Yes.

Q. And it was open practically to its capacity when you found it?

A. Yes, very close to it.

Q. Suppose the valve from that particular tank was open practically to its capacity, as you have described, and these two shut-off valves from the drain-line were open, as you have indicated, about one-third of a turn, what would be the result with respect to the gasoline, if any, in the tank controlled by that shut-off valve?

A. Well, you would have a slow leak through your drain-line.

Q. Until eventually all of the gasoline in that tank would leak out into the bilges?

A. Yes, sir.

Q. The gasoline would run down to the level of the outlet pipe, I mean?

A. Yes, as far as it could run out; as far as it would and could run out.

Mr. Underwood:

May I ask if Mr. Botts is changing his testimony. The Witness said the gas would run into the bilges, and now Mr. Botts—

The Court:

You can cover that on cross examination. The question has already been answered.

Mr. Botts:

That is all.

### Cross Examination.

By Mr. Underwood:

Q. Captain, have you calculated how fast gasoline could come out through the drain valves, such as these, open a third of a turn, as you say these were?

A. Yes.

Q. How fast?

A. That could only be done by actual test.

Q. It depends on the head, of course?

A. Yes, and on the gasoline, of course.

Q. Whether it would be slow would depend on what you would call slow?

A. Yes.

Q. And depends on what you would call fast?

A. Yes; you would have to do that by an actual test.

Q. You couldn't figure that otherwise without an actual test?

A. No.

Q. You don't know how to do it?

A. No, I don't. There is no possible to figure how far your valve is above the seat.

Q. You say it was open one-third of a turn, is that right?

A. Yes.

Q. Are you sure there is a pet cock in this strainer on Exhibit 17?

A. All strainers I have ever seen had pet cocks.

Q. Do you say that the use of a pet cock is bad?

A. Yes, on gasoline lines.



Q. Do you find anything in your rules about that?

A. Yes.

Q. Look at the rules and see if you can find anything about a pet cock on a strainer being bad practice. Look on page 47 of the N. F. P. A. 1930 rules, Paragraph (i).

A. Will you turn to page 48k; that forbids the use of try-cocks which is the same size and type of cocks which is on the bottom here.

Q. That is talking about glass gauges and try-cocks for determining the level of gasoline in tanks, isn't it; isn't that right?

A. Right, yes.

Q. It isn't talking about a petcock in a line, is it?

A. I am talking about petcocks.

Q. But paragraph K on page 48 is not talking about petcocks in the line, is it?

A. No.

Q. Isn't it a fact, Captain Patten, on page 47, paragraph (1) says, "shut-off valves or cocks of approved type, such as those having ground seats or plugs, shall be placed in the supply line from tanks". Isn't that what that says?

A. Yes, sir.

Q. Doesn't it approve the use of cocks of an approved type?

A. A petcock is not a plug cock.

Q. Look at that again; it says, "shut-off valves or cocks of approved type". Doesn't that approve the use of cocks in the gasoline line?

A. Of approved type.

Q. Yes. Do you know what kind of a cock was in that thing?

A. I know what these standard strainer cocks are on strainers.

Q. Do you know what kind of a cock was there before the fire?

A. I believe I could describe it.

Q. Do you know; did you ever see it?

A. No, sir.

Q. What would be the effect of vibration on such a petcock as you have in mind?

A. Might wiggle it loose.

Q. What would be the effect of vibration on a plug?

A. A spring plug, it wouldn't.

Q. How about an ordinary plug?

A. It is possible it will wiggle it loose.

Q. How about the petcock of approved type?

A. On a gasoline line?

Q. In that strainer.

A. A spring cock that has a spring at the base of it, I would approve of that.

Q. Would vibration affect such a plug,—such a petcock?

A. Not with a spring.

Mr. Matteson:

If your Honor please, I object to Mr. Underwood continually referring to a petcock, as if he got it out of Rule (i). I don't understand that refers to petcocks, at all.

Mr. Underwood:

The witness can take care of himself.

Mr. Matteson:

Well, I don't think you ought to try to mislead him.

Mr. Underwood:

I am not.

Q. Now, Captain Patten, if you have all four of these tank valves open, and these two drain valves open a third of a turn, what is going to happen to the gasoline back in the tanks?

A. What do you mean, these drain lines?

Q. These two drain valves, Exhibit 11?

A. What is going to keep it back? Nothing that I know of.

Q. Run right out, won't it?

A. Yes.

Q. If those valves had been left open, if those four tank valves had been left open on the 16th of April, 1935, and the two drain valves had been left open a third of a turn at the same time, there wouldn't have been any gasoline left in those tanks on the 24th of June, would there?

A. That is depending on the amount of leakage.

Q. Do you know the capacity of those tanks?

A. 2200.

Q. Gallons?

A. Yes, sir.

Q. And do you have any doubt in your mind; do you have any thought that there would still be any gasoline in those tanks, above the level of the draw-off valves, if all four tank valves were open and the two drain valves were open a third of a turn, after that period of time?

A. It is quite possible.

Q. You think it is?

A. Yes, sir.

Q. That is your opinion as an engineer, is it?

A. It is. A third of a turn is really,—your valve is cracked, it isn't wide open by any means.

Q. You haven't conducted any experiment to ascertain that?

A. No, I could have if I could have got hold of these drain lines.

The Court:

Was your answer "quite possible that it would not have drained"?

A. No, it wouldn't have drained,—depending; that is all depending on how much of an opening was in that drain valve.

Q. In your visits to the Seminole did you see any drip pans under the gasoline tanks?

A. No, sir; I didn't.

Q. Do you say there were none?

A. I didn't see any.

Q. Well, you stuck your head through this little bunker hatch, didn't you?

A. No.

Q. I thought you said you did.

A. No, I went around forward, through the passageway, up forward and stuck my head underneath the tanks.

Q. From the forward end?

A. Yes; I never had my head in that bunker.

Q. Well, you stuck your head under the tank from the forward end and had your head in the old bunker space, or below it, didn't you?

A. I don't know what her bunker was; it was a coal bunker, but I imagine it was level with the fireroom floor.

Q. Did you stick your head in the space under the tank?

A. From forward, yes.

Q. And did you see any pans?

A. No, I didn't.

Q. You saw the four tank bottoms, didn't you?

A. A minute ago you were speaking of drip pans under the carburetor as I understood it.

Q. I am talking about gasoline tanks. Did you stick your head in the space under the gasoline tanks?

A. Yes.

Q. Did you see any drip pans or pans of any kind under there?

A. No, sir.

Q. Did you say there were none?

A. I did not say it; I said I didn't see any.

Q. Well, now, Captain, you say you are an experience man. Would you recognize a drain pan if you saw one?

A. I would if I saw one.

Q. Could you be mistaken about that?

A. No. I say I didn't see any drip pans, or any pans under that tank; not the tank I could see; I could only see the bottom of one tank.

Q. What kept you from seeing the bottom of the other tanks?

A. There appeared to be sheet metal under those.

Q. Not a pan, but some metal, is that it?

A. Sheet metal, yes. I never put my knife into it to see what it was, but I imagine it was steel sheeting.

Q. You don't know about that?

A. No, it had every appearance of being steel.

Q. Now you have talked about drip pans under the carburetor. The kind of a device, I understand you mean, is something that gathers the drips from the carburetors and holds it there, until you start the motor, and that sucks the drips back in?

A. Providing it has a drain from the bottom of the tank into your manifold; not otherwise.

Q. That Venturi pipe?

A. Yes.

Q. And you say the advantage of that is that it has a gauze screen over the intake?

A. No, over the top of the pan.

Q. Over the top of the pan?

A. Yes. Through which fire cannot get, is that,—not through 40-wire gauze.

Q. Similar to a miner's lamp?

A. Yes.

Q. Now, what happens if the leak continues until capacity of the drip-pan is reached and exhausted?

A. Runs into the bilge or on the engineroom floor and finally into the bilge.

Q. What is the capacity of the ordinary drippan of that type under a carburetor?

A. Of a generating engine, or a big motor?



Q. Of a motor such as this vessel had?

A. Under the main motor usually about from three inches deep, by six, by ten; perhaps holds a quart.

Q. So that after the carburetor leaks a quart, you have a leak right down in the bilge anyhow, is that right?

A. That's right.

Q. So if these carburetors were dripping for sixty days it wouldn't have made any difference whether there was a drain pan under the carburetors or not, would it, Captain?

A. It would, up to the time that drippan was filled to capacity.

Q. Then it would go right down to the bilge anyhow?

A. Yes. A drippan is only for a small leak.

Q. Of short duration?

A. Yes.

Q. You don't know whether the carburetors on the Seminole leaked or not prior to the time of this fire and explosion?

A. No, sir; I do not.

Q. You don't know whether there was any leak in the Seminole do you?

A. In the gasoline lines?

Q. Yes.

A. Results prove it.

Q. You don't know from your observation that there was any leak, do you?

A. Yes, that drain line leaks; it shows that big ground joint, that wouldn't hold gasoline.

Q. Well, you said that the drain valves were open?

A. Yes.

Q. Well, let's leave that out for the moment. Apart from the gasoline that got out through the drain line valves, if any, you don't know of any leak in that vessel, do you?

A. I wasn't there until afterwards.

Q. No; and gasoline that came out of that drain valve, if any did, was ample to account for this explosion, wasn't it?

A. Take very little to blow her up.

Q. What is the proper kind of a washer for a glass gauge on a gasoline tank?

A. On a gasoline tank? I don't approve of any kind of a glass gauge on a gasoline boat. For steam—

Q. Suppose you have a glass gauge, what is the best kind of a washer you can use on it?

A. Rubber, they should not be on a gasoline boat.

Q. Suppose you have one on there, what is the best kind of a washer to use? The best kind of fitting to fit it with?

A. If I had one on a gasoline boat, I would remove it and plug it.

Q. We understand that, let's go on from there. What is the best kind of a fitting you can use?

A. On a glass gauge?

Q. On a glass gauge on a gasoline tank?

A. I won't admit that any kind of a fitting is good on a glass gauge on a gasoline boat.

Q. None whatever?

A. None whatever.

Q. Now, what is the best, or the least bad if you would rather put it that way.

A. Gauge?

Q. Fitting?

A. I won't admit that any fitting connected with a round glass gauge is safe on a gasoline boat.

Q. I haven't asked you that, Captain Patten; can't you understand my question?

A. I understand it.

Q. What fitting is the least vicious on a gasoline—on a glass gauge on a gasoline tank?

Mr. Matteson:

What do you mean by the fitting?

A. It is all vicious, any part of a glass gauge on a gasoline boat.

Q. You said something about a rubber washer; what kind of a washer is better than a rubber washer, or, is a rubber washer as good as you can get on a glass gasoline gauge?

A. Not on gasoline.

Q. What is the better kind?

A. Well, pack it with cotton.

Q. Is that the best?

A. Leather.

Q. Is that still better than cotton?

A. I should think so, yes.

Q. And is there anything better than cotton?

A. Fibre.

Q. And is there anything better than fibre?

A. No, not that I know of.

Q. That's the best?

A. Yes.

The Court:

That is packing for what?

Mr. Underwood:

The glass gauge on a gasoline tank.

The Court:

I understand that; packing it where?

Mr. Underwood:

At the top and at the bottom of wherever it is connected.

A. That is the gland which holds the water or gas tight.

Q. Are you an electrician?

A. Oh, I run some wires, yes, sir; I am not practical electrician.

Q. Ever wire a boat?

A. Yes, I have done some wiring on boats, that is straight wiring, not around the switchboards though.

Q. Sort of a domestic electrician, like I am?

A. Yes, I can put a plug in.

Q. Does it make any difference as to the arc you get when opening or closing the knife switch, whether the current be direct or alternating?

A. Well, on all boats—

Q. Do you know whether it makes any difference whether the current is direct or alternating?

A. That, I couldn't say; I am not electrician enough for that; but most boats—

Q. You have answered my question, Captain Patten, thank you. Did you observe how far down the bulkhead went, that is between the tank compartment and the forward end of the vessel?

A. I don't just understand that; what do you mean?

Q. You remember you put your head under the tanks from the forward end?

A. Yes, sir.

Q. Did you put your head under the bottom of that forward tank compartment bulkhead?

A. I did not; I believe it was about 36 inches; I took a yardstick, I got down in that debris; might be a few inches more than that.

Q. You mean it is approximately 36 inches or a little bit more from the bottom of that forward bulkhead, down to the skin of the ship?

A. Yes; it might be 40 inches; a lot of dirt and debris in there.

Q. Did you notice how far down the after window of the tank compartment went?

A. No, I didn't.

Q. Did it go the same distance, or further, or not so far?

A. It would be some job to get in there.

Q. Do you know?

A. No, I don't.

Q. Do you know whether the bilges were open from the forward end of the ship to the after end of the engine room?

A. I believe they were.

Q. How about all the way aft, through the after part of the vessel, too; you know about that?

A. I don't believe it is a water tight bulkhead; it had limbers in there.

Q. You said something about it being your opinion, Captain Patten, that you ought to use copper tubing, is that right?

A. That's right.

Q. The NFPA rules don't require copper tubing, do they?

A. All rules I have read of for years, require copper tubing on gasoline line on boats.

Q. You say that the NFPA rules for 1930 require tubing,—copper tubing?

A. I think you will find it is all copper tubing.

Q. Do you say that?

Mr. Matteson:

Do you have the Exhibit, or the witness?

Mr. Underwood:

I have it.

Mr. Matteson:

This is what he is referring to Captain.



A. Oh, what page?—yes, sir.

Q. What do you mean by "yes, sir"?

A. All fuel piping to be seamless drawn annealed copper tubing.

Q. Do you want to stop there?

A. Or IPS copper pipe.

Q. Isn't it a fact that the rules do not require copper tubing?

A. Well, copper pipe is copper tubing of heavier grade.

Q. Isn't it a fact that the rules do not require copper tubing?

A. That is quite right. I would pass copper pipe.

Q. And isn't it a matter of fact that the pipe referred to is standard pipe?

A. Yes.

Q. With threaded fittings?

A. Yes, you can't thread tubing.

Q. So that the copper pipe that the 1930 rules permits, is threaded pipe?

A. Yes.

Q. Is that right?

A. Right.

Q. And the 1937 rules make the same provision, don't they?

A. I will have to look it up.

Q. Look at paragraph 22.

A. That is right.

Q. That is right, isn't it?

A. Yes.

Q. Captain, you said something about the valve on Exhibit 2, which is a tank valve, according to the tag, which bears your name, and attached?

A. Yes.

Q. Do you know whether that valve was open or shut?

A. Open.

Q. At the time the fire occurred?

A. Open, there is a hacksaw mark on it.

Q. Is it your testimony that all the valves were open?

A. No; I testified that this valve was open.

Q. Do you know about the others?

A. No, only from hearsay.

Q. Of course, you don't know whether there was any support for this drain line, or not, on the Seminole before the fire, do you?

A. No, not before; but not after.

Q. Well, if there was a wooden support, that was gone when you saw the Seminole?

A. No doubt about it.

Q. Now Captain you have said that too many fittings were employed in making up the connections between the two valves marked Exhibit 11. You don't know whether they leaked prior to this fire, or not, do you?

A. It is possible,

Q. You don't know whether they did, do you?

A. If those, the seats,—I don't know what the other one is. I didn't have that part, but if the seat was in the same condition at the time of the fire as it is now, it is bound to leak.

Q. You don't know whether these valves leaked or not, do you?

A. No.

Q. If the four tank valves were open and the two drain valves were a third open, and the tanks had gasolines in them, those openings alone could account for enough gasoline and vapor to cause an explosion, could they not?

Mr. Botts:

I object, because there is no,—I think counsel inadvertently said, the valves a third open,—instead of being a third of a turn open. Did you intend that?

Mr. Underwood:

No, I did not; a third of a turn open; thank you, Mr. Botts.

A. Let's get it straight; how much gas was in the tanks?

Q. None; but assuming that there was gasoline in the tanks.

A. Let's assume how much.

Q. Any amount you like.

A. All right.

Q. And assuming that the two tank valves were open.

A. Yes.

Q. And assuming the draw-off valves were open a third of a turn; leakage from that could account for enough vapor to cause an explosion, isn't that right?

A. Right.

Q. Do you know what the figures 125 and 150 mean on the two valves marked Exhibit 11?

A. That is the water pressure which they will stand,—built to stand.

Q. You confine it to water pressure?

A. Water or steam.

Q. That includes steam pressure, doesn't it?

A. Yes.

Q. Do you know what the pressure on such a valve would be, located, as you understand it, in the Seminole, with her tanks full?

A. A little less than half a pound per foot elevation.

Q. And if the tanks were eight feet high, that would be about four foot pressure?

A. A shade under that that.

Q. As compared with 125 pounds and 150 pounds, for which the valves were made: Right?

A. Yes.

Q. Speak up, Captain. The answer was, "Right"; did you get that?

A. I say, yes.

The Court:

What was that question?

(The preceding testimony was read by the reporter.)

Q. Do you say, Captain Patten, that it is improper to draw off gasoline in any engine room at any time?

A. Yes, sir.

Q. What is that little device for?

A. Which?

Q. The strainer on Exhibit 17?

A. That is to separate the water from the gasoline, in condensation.

Q. What is the hole in the bottom for?

A. There wasn't any hole when the petcock was on there.

Q. What is the petcock for?

A. To drain it off.

Q. Drain what off?

A. The water.

Q. Can you always stop at the water? You always get some gasoline when you do that, don't you? Captain? —Don't you?

A. Yes.

Q. That is not for bidden, is it?

A. I don't know any rule against draining off your—draining that off.

Q. It is a necessity, isn't it?

A. Yes; your engine, if she is getting water, will sputter and you have to drain the water out of the strainer.

Q. In other words, that is something that, in the reasonable operation of the motors, you have to be able to do; is that right?

A. Yes, an engineer would naturally drain that off when there is ventilation in the engine room.

Q. Wouldn't he naturally drain it off when his motor was sputtering?

A. Not if he is a careful engineer.

Q. You think he would open the windows to do that?

A. Yes, if he knew his business he would.

Q. But he would do it when his engine was sputtering, and get the best ventilation that he could?

A. That is possible, but there isn't ventilation when she is running.

Q. You said as I understand it, that the angle between the plug and the seat, on the valve marked Crane 125, on Exhibit 11, is not to your liking?

A. Yes, sir.

Q. Right?

A. Right.

Q. Too flat?

A. Too flat.

Q. Is there anything in your rule book anywhere that says what that angle has to be?

A. Not that I know of, so long as the one who makes the installation, puts the proper valve to handle the gasoline.

Q. Now, I would like to ask you a question and ask you to answer it either yes or no: is there anything in either of these rule books that have offered here in evidence today, that says anything about what the angle shall be?

A. I don't believe there is; that is left to the experience of the builder and the installation man.

Q. And that is a matter of judgment?

A. Right; and a man with good judgment wouldn't put those valves in.

Q. So you say?

A. Well, that's my opinion.

Q. How closely did you examine the gasoline tanks of the Seminole?

A. Pretty close.

Q. Can you tell me the detail of the construction of the bottom of those tanks?



A. A concave bottom,—crown, as we call them.

Q. And how were they put together?

A. Riveted.

Q. Can you draw me a little diagram showing the sides of the tanks and the metal that went into the bottom and how the two were put together?

A. Yes. (Witness drawing.) These aren't to scale, you know.

Q. We will agree that it is not to scale.

A. That drain line was four and a half to there.

Q. Witness draws diagram and indicates that the drain valve was four and a half inches,—the center of the drain valve was four and a half inches above the bottom of the edge of the tank.

A. Yes, that is right; and there was a lap seam with rolled rims.

Q. At the side?

A. At the side, yes.

Q. Now Captain, down here where the bottoms and the sides were riveted together, what was the distance during which those two pieces of metal were adjacent to each other, and riveted together, before the bottom left the side?

A. You mean the distance of the rivets from that edge?

Q. No; I mean the distance between the bottom edge of the metal and the pan where the tank separated from the side and began to make the V.

A. I will say about an inch and a half.

Q. Did you measure it?

A. Only with my eye.

Mr. Underwood:

May we have that marked?

(Said paper was marked Respondents' Exhibit M for identification.)

Q. Do you understand me, Captain Patten, what I was asking you is over how long an area were the bottoms and the side contiguous?

A. Touching?

Q. Yes, before they separated.

A. It wouldn't be more than two inches.

Q. That is your measurement by eye?

A. By eye, yes, sir; and by the curve of the convex bottom.

The Court:

Hasn't the bottom of the tanks been described at various times as concave, and not convex?

A. I never can keep the meaning of the two words straight; I know they went up like that.

Mr. Botts:

All the witnesses have said the bottoms went up, and the tops were a little bit crowned on the top, but the bottoms have all been described as being convex,—that is, swinging up from the bottom.

Mr. Underwood:

That is concave. \* \* \*

Mr. Botts:

Anyway it curves up so that it is higher in the center than anywhere else.

Q. I think you said, Captain Patten. That after 14 years of use those tanks would be on the verge of the end of their usefulness; is that right?

A. I believe so, yes, sir.

Q. You think they would just about be beginning to go to pieces?

A. They would be pretty badly pitted down in that V section there, that you just drew.

Q. And they might or might not begin to leak?

A. It is quite possible they will leak before long; should have leaked by this time, according to my estimation of that type of can, or tank.

Q. Did you measure the thickness of the metal?

A. No, I didn't measure it, but I judge it to be about eight pound plate.

Q. How thick?

A. About six pound plate, I guess; ten pound is quarter inch; it is less than quarter inch plate.

Q. You think this was less than quarter inch, do you?

A. Yes, I knew it was less than quarter inch.

Q. Have you got any note on that?

A. No, sir.

Q. When did you make the observation?

A. Right after the fire, and at the time we were all up there.

Q. Without any note, you now remember that this was less than a quarter of an inch thick, is that right?

A. Yes; that's right.

Q. Do you say that those tanks could not be tested, installed as they were?

A. No, I didn't say that; they can be tested, but not examined.

Q. What you said was, they couldn't be examined.

A. That is right.

Q. You make the distinction between examining and testing?

A. Yes.

Q. It wouldn't be difficult for an engineer to test those tanks, would it?

A. No, I wasn't asked anything about testing a tank.

Q. And it is a fact that it would not be difficult to test those tanks?

A. No, certainly not.

Q. You have in mind a pressure test, I take it?

A. Yes, hydrostatic test.

Q. You were shown a photograph which showed No. 2 tank out of position. Do you know when that tank got out of position?

A. At the time of the explosion.

Q. Of course you weren't there; that is your opinion?

A. Pretty close to it.

Q. And is it your opinion that the effect of that movement of the tank was to shear off the valve?

A. I believe so; it shows every evidence; the opening in the tank is above the opening in the bulkhead hole.

Q. And that would open wide the opening where the valve joined the drain line, the manifold, would it not?

A. That is right.

Q. And if the other three tanks were still attached to the manifold, with their valves wideopen, the gasoline could freely run from that hole?

A. That's right.

Q. Could it not?

A. That is right.

Q. And that hole precedes the drain line valves on the manifold, does it not?

A. Now, I want to be right in my answer; just explain that—

Q. Gasoline from No. 1 tank—

A. No. 2.

Q. Gasoline from No. 1 tank would reach the hole made by the breaking off of No. 2 tank, before it would reach the drain line valve?

A. Yes, it would reach the—not the hole in the tank, but the broken off nipple in the valve.

Q. Which had been connected with No. 2 tank?

A. Yes.

Q. Have you been aboard vessels that have had fires?

A. Yes.

Q. You said something about Abel's body would have been consumed except for the concrete; what did you mean by that?

A. Well, when they got all the water pumped out and they scraped all the burned wood and debris away, when the fellow was scraping, scraped some of his intestines out with his fingers; it is not very nice to describe.

Q. I don't mean for you to go into details; I just mean, your general thought on the subject.

A. Well, they scraped all down along until they come to his body, and then on top of his body was this big slab of concrete, which more or less protected his body from the intense heat.

Q. That is what I am getting at. Did that lead you to some conclusion as to the intensity of the heat?

A. Why yes, it did.

Q. What did you think about that?

A. Why, I figured if that concrete hadn't been over his body, his whole body would have been consumed.

Q. Did you think it was a particularly intense heat?

A. Well, gasoline is a pretty hot fire.

Q. Do you think this was a hot fire.

A. I know it was a hot fire.

Q. All over the boat, all over it?

A. No, I think the worst of the fire was in the engine room and the forward bilges.

Q. Including the tank compartment, I suppose?

A. Well, I am including that, that's between them.

Q. Now let's talk about this spring, of doubtful substance; just where was it?

A. Let me have your blueprint, I will put a spot on it; it is hard to describe; looking down—

Q. You better make the letter "s" when you write.

A. That appeared to be somewhere in about there; that's as near as I can judge it.

Q. It looks more like a dot than a letter s, to me, Captain. Wait a minute, I will draw a line and mark it "Spring"—we will be here until Summer with this thing.—Now how long did you observe that—I might say this is on Exhibit A.



A. Three or four minutes before one of the other boys plugged it.

Q. You saw it—

A. Might have been five or six minutes.

Q. You saw it welling up during that period?

A. It welled up I would say, maybe an inch, inch and a half, it appeared. Let me describe it this way:

Q. A good substantial flow, was it?

A. No, it wasn't flow enough to squirt a stream up. It was the same as if you had an open hose under level water, and would take just force enough to push it up like a mushroom; that's the nearest I can describe it.

Q. How big an area did that crown cover?

A. From where I was standing it looked to be about six inches the size of a saucer.

Q. And how far above the level of the surface of the liquid in the boat?

A. Say an inch to be safe; inch and a half.

Q. Did you go down—

The Court:

Let me get that; that inch and a half was what?

Mr. Underwood:

The vertical distance above the level of the surface of the liquid in the boat.

The Court:

I understand.

A. Same as if you put a saucer upsidedown on the table.

Q. Where were you standing when you saw it?

A. Right by the rail of the Seminole.

Q. What were you standing on?

A. On the rail.

Q. You were on the Seminole?

A. Yes, what used to be the rail.

Q. On the edge of one of her side plates?

A. That is right.

Q. What did you use for lights?

A. Had a flashlight; we all had flashlights there.

Q. Played it on the spot?

A. Yes. Really how we come to find it, we was looking to see how deep or how low the water was getting, and see this, what we call a spring bubbling up; that's how it was found.

Q. You didn't go down in to trace the spring and its source?

A. No; I would have to have hip boots to go down there.

Q. What was the level of the water at that time?

A. Above the engine room deck beams, I should say there was maybe three foot of water above that.

Q. Just what do you mean by the engine room deck beams? Do you mean the beams on which the floor boards sat—rested?

A. Yes, perhaps two and a half to three feet above that. You must realize at that time we were looking for a body, we didn't take all these measurements.

Q. How did the level of the water at that time compare with the top of the opening into the tank compartment? I think it might be easier for us to visualize, than to—

A. You could see part of that opening, the upper half, I would say.

The Court:

Has anyone asked either Mr. McCoy or Captain Patten, or any other witness, where was this so-called spring, with reference to the holes that were used in pumping out?

A. Oh, that was quite a distance;—you want me to answer?

The Court:

Yes, sir.

A. First they put the suction end of the hose, with the strainer, down on the engine room floor, but they couldn't get it, there was some obstruction there. So then I believe they pulled it out and put it down the passageway where they could slide it down under a lot of this debris. I know they tried in two or three places, to get a better suction.

The Court:

And where was the exhaust,—where did they pump out?

A. That was on the float, about 15 feet away from the suction; perhaps 10 feet away from it; that wouldn't affect the water inside of the hull.

Q. The suction, Captain Patten, you have said, was under a passage; is this the passage that you referred to?

A. This is the passage; of course all of your floors were burned off.

Q. You indicated a passage that ran along the star-board side of the engine room?

A. Yes; only one passage in there; that is abreast of the engine room,

Q. And the suction was under there?

A. They tried it in here, but they got in that pile of old Edison batteries and they couldn't get it down deep enough.

Q. So they put it down here?

A. No, they put it down this way, in there.

Q. Indicating from the outboard, inboard?

A. Yes, sir, slid it underneath there,—that bulkhead. They tried it in possibly four different spots, to get the deepest spot.

The Court:

Just a moment ago back there, Mr. Bryant, before I asked that question, or these questions, read the answer just before that. (Preceding testimony was read.) That question, opening into the tank compartment,—what opening did you refer to?

Mr. Underwood:

We were talking about the square, the rectangular opening through which they used to shovel coal. That may not have been as close as it should have been, but I think the witness and I understood each other.

A. Yes.

Q. Did you see the plug that was put into something that was—in order to stop this leak,—this spring? Did you see the plug?

A. I seen them put it in.

Q. How big was the plug?

A. Well, a sliver of wood with a piece of rag around it. I should say possibly, might have been from a quarter of an inch to half an inch.

Q. Of the wood, in diameter?

A. It looks that way; how much it compressed getting into that pipe, I don't know; but it stopped the leak to a great extent.

Q. Now you have told us about a pump, and some gasoline coming out of the discharge. What is the size of the pump?

A. I didn't measure it, but I should say it is a three inch pump, possibly four, but I don't think so.

Q. You mean a three inch discharge?

A. Yes.

Q. Or four inch discharge?

A. Either a three to four inch.

Q. And what was the size of the intake?

A. About four inch.

Q. And did you know anything about the bore or stroke of the pump, or the speed,—oh, this was a centrifugal pump?

A. Centrifugal pump.

Q. Pardon me. Do you know what its capacity was?

A. No.

Q. How long did you see that pump pumping a mixture of gasoline and water?

A. All of an hour and a half; I didn't time it; but I was there until they finished.

Q. And it was a pumping a mixture of gasoline and water all this time?

A. Not at first, but as soon as we got into the gasoline, it was very strong.

Q. How long was it pumping a mixture of gasoline and water?

A. I will be safe to say a full hour, possibly longer.

Q. And do you want to tell me what percentages of density represented gasoline and water? Was it 50-50 or 90-10—or what?

A. Strong enough to give you a headache.

Q. Well, how much does it take to give you a headache?

A. I really did have a headache; I went to windward of it to get some fresh air.

Q. Well, you were there, Captain Patten, and you say you saw a stream of water which was in substantial part, gasoline?

A. Yes.

Q. And I appreciate that you can't calculate it to a nicety, but I do want your best judgment on it.

A. I would only have to guess, and that would be an awfully poor guess. It was a very strong mixture.

Q. Going on for an hour?

A. Yes, we smelled that gasoline for an hour.

Q. Well, now, let me make sure about this; did you just smell gasoline for an hour, or do you say that the



pump was pumping a mixture of gasoline and water for an hour?

A. I was right there and smelled that strong mixture for over an hour.

Q. Out of the pump, now?

A. Out of the pump.

Q. No mistake about that?

A. Positively. If you went to the windward side of that barge, you couldn't smell the gasoline.

Q. Was this before or after you saw the spring?

A. About the same time; we were pumping a mixture of gasoline at the same time we found this spring.

Q. Well, now you saw the spring after the water receded somewhat inside of the boat?

A. That is right.

Q. How long before you saw the spring, had the pump been pumping gasoline and water?

A. I couldn't answer that question intelligently.

Q. Well, you were there.

A. I know, but I wasn't timing any of these things; we were looking for a dead man.

Q. You weren't looking for the body while you were pumping, Captain Patten?

A. No, but that was our objective.

Q. Your objective in pumping was to get down to the body, but you weren't looking for the body at this time?

A. No, that is quite right.

Q. Now, how long was it?

A. I couldn't answer that question.

Q. Was it half an hour, or an hour, five minutes?

A. Sometime before we found this spring, every few minutes, we would take a searchlight, one of us, and look down into the dark hull and see how far the water had receded, by a mark on the bulkhead, and in casting the searchlight around, the spring was discovered.

Q. You said, I think that the other vessels were all submerged and burned to the water line, except the three?

A. There was a schooner—

Q. Well, is that right?

A. Yes, that's right; a sloop, a schooner, and a cabin cruiser.

Q. Were you aboard any of the other vessels in Pilkington's yard, prior to the fire?

A. No, except the steel barge.

Q. Then of course, you don't know whether any of the other vessels had gasoline in their tanks, or not?

A. No, I don't.

Q. Well, assuming that one of them did, you don't know what became of it, do you?

A. No.

Q. Whether it blew up, or sank, or leaked out on the surface of the water, during the time the pumping was going on from the Seminole? You don't know about that, do you?

A. Things were—the time we were pumping in the Seminole, things got kind of quiet, except that some of the tops of these piling were still on fire.

Q. Well, now, you—the occasion of your going to the basin that evening, was the telephone call that you got?

A. Yes, sir.

Q. And that was from an insurance agent?

A. No; he called up first, I believe, or he had—wait a minute, I think Mr. Miller called up Hunter Lyons first, to recommend him a man, and then Mr. Miller called me up.

Q. You got a call from an insurance agent?

A. Possibly.

Q. On the evening of the fire?

A. —told me about it.

Q. Is that right?

A. I think that's right.

Q. You testified so this afternoon, didn't you—or this morning?

A. That is right.

Q. And that evening you went to Pilkington's?

A. Yes.

Q. Had a conversation with Mrs. Pilkington that evening?

A. Yes.

Q. In which you inquired of her the names of all the other boats?

A. That is right.

Q. And your purpose in making that inquiry was so that you could notify the insurance companies interested in those boats?

A. I always do that.

Q. Well, that is what you did that night, isn't it?

A. Yes, after the meeting.

Q. And the day the body was found, you participated in the removal of some property that didn't belong to you, in order to save it for evidence in future litigation, didn't you? These exhibits here?

A. I signed these tags, yes, sir.

Q. And you participated in the removal of that property, didn't you?

A. I did not remove them.

Q. You participated in the removal of that property, didn't you?

A. I signed the tags and attested them after they got through.

Q. Who was it turned those pieces of property over to Mr. Miller?

A. I believe I did.

Q. You knew they didn't belong to you, didn't you?

A. No, I was representing Mr. Miller.

Q. You knew though, that those pieces of property didn't belong to you, didn't you?

A. Didn't belong to me, no.

Q. And this transpired on the day the body was removed, didn't it?

A. They were taken off the boat that day, yes.

Q. You delivered to Miller that day, didn't you?

A. No, I think—I wouldn't be sure, but I think they were left at Pilkington's for a while. I didn't want them.

Q. You are an underwriter's representative, aren't you, Captain Patten?

A. Not totally.

Q. You are, aren't you?

A. Yes.

Q. You investigated the fire for them,—for the underwriters, didn't you?

A. First I investigated it for Mr. Miller; I made a report to the underwriters also.

Q. You called on Thomas more than once, to inquire about this fire, haven't you?

A. No, I don't think so; once is all.

Q. You have called on Brown, the former engineer of the Seminole?

A. Brown? No.

Q. You have called on other people at additional times?

A. I never saw Mr. Brown until he sat in this chair.

Q. You have called on other people?

A. Name them, please.

Q. Haven't you?

A. I talked to McCoys about it.

Q. And others haven't you?

A. If you name them, I will admit them if it is true.

Q. Do I have to name them in order to get you to admit that you have called on other people seeking witnesses in this case?

A. That Lauderdale fire was the talk of this district for months.

Q. Perhaps you didn't understand my question? Captain Patten: Do I have to name them in order to get you to admit that you called on other people to get them as witnesses in this case?

A. Witnesses. Let's see. I don't recall that I went around soliciting any witnesses for this case.

Q. You represent about 28 underwriters, down here, don't you?

A. About that.

Q. Is that right?

A. Yes.

Q. You have so testified before, haven't you?

A. Yes, sir; that's right.

Q. Its a very substantial part of your livelihood, is it not?

A. Yes; not all of it, though.

Q. And you know—

A. Furthermore—

Q. You know that insurance companies have a very substantial interest in the outcome of this case, don't you?

A. No doubt about that; but I am not connected with any one insurance company; I am an independent surveyor.

Q. You do represent some 28 insurance companies, don't you?

A. On a fee basis.

Q. What?

A. On a fee basis. I am not on a salary with any of them. They want my services, they send a telegram.

Q. But you are regularly employed by them from time to time?

A. Whenever I get a call to do a job, I do the job for them, yes.

Q. And you hold yourself out as an underwriters' representative, don't you?

A. Yes, you've got to have something on your card.

Q. Well, isn't that true?

A. Yes, whenever I am called on, I represent the underwriters.

Q. Is it true that you hold yourself out as an underwriters' representative?

A. That is right.



Q. And are you one?

A. Yes, but not on the payroll.

Q. You get paid by them?

A. After the job is done, yes.

Q. And a very substantial part of your income, comes from marine underwriters, doesn't it?

A. About two-thirds of it.

Mr. Underwood:

That is all.

### Re-Direct Examination

By Mr. Botts:

Q. Perhaps, Captain, you would be too modest to answer this question, but usually underwriters hire competent men, do they not?

A. I should think so.

Mr. Botts:

That is all.

By Mr. Matteson:

Q. Captain, your attention was called, by Libelants' Exhibit 97, to the provision on page 48 for the use of copper pipe. Now, will you tell me what sort of fittings are required when copper pipe is used?

A. Do you mean, unions and elbows?

Q. Yes.

A. Brass.

Q. And is there anything further than the material? What type?

A. Extra heavy.

Q. What type of fittings? What are the requirements of proper fittings on copper pipe? I call your attention to the rule here.

Mr. Underwood:

If the witness is to be asked to read the rule, the rule speaks for itself, your Honor. \* \* \* I want it to be clear what Mr. Matteson is getting,—the witness' opinion, or the rule book. Apparently he wants the rule book from the mouth of the witness.

A. Right here is your page, non-ferrous composition throughout, standard type thread.

Q. I call your attention to the provision of the rule here, Captain; you understand what I mean.

Mr. Underwood:

May it appear just what Mr. Matteson is suggesting to the witness?

Mr. Matteson:

I am calling his attention to the provision 2 (b), the second half of it on page 48.

A. All valves, cocks and pipes or tube fittings shall be of Non-ferrous composition.

Q. Is this the provision that Mr. Underwood called your attention to?

A. This was it; annealed copper pipe.

Q. Is this part of the same provision?

A. It doesn't mention anything about that; fittings and connections,—

Q. The point I make, Mr. Underwood called your attention to the provision here for the use of copper pipe.

A. Copper pipe instead of copper tubing.

Q. (Cont'd) Now I want to ask you in the same provision, what is the provision with respect to the fittings to be used with copper pipe?

A. Shall I read it out?

Q. Yes.

A. Fittings and connections, for tubes shall be at least equal to the solderless type of the SAE standard practice code, and for pipe, with the exception of ground unions, shall be standard pipe threaded and soldered.—The only difference, you would solder them.

Q. The provision is that such fittings shall be threaded and soldered, is that right?

A. Yes, sir.

Q. I want to call your attention to the Exhibit No. 2; is that copper pipe such as is referred to in the rule?

A. No, sir; that is brass.

Q. Can you tell whether any of these fittings have been soldered or not?

A. That is impossible, unless you back them out.

Mr. Underwood:

I can't hear you.

A. I say, that is impossible unless you back one out; then it may be all melted out.

The Court:

Well now, under my ruling with respect to the use of the rules, I think that the witness ought to tell in his own language the criterion by which you are trying to—the present question is directed as to whether it measures up to that criterion.

Q. I will ask you that directly. Mr. Underwood read part of the rule, but didn't read the entire rule.

The Court:

First let the witness tell, since he had the benefit of reading the rule, let him tell in his own language just what he thinks the standard ought to be, and then answer your question presently, put to him.

A. Well, to comply with the standard rules—

The Court:

Not to comply; what is the standard?

A. It is either copper tubing—

The Court:

Let Mr. Matteson ask you a question.

Q. Captain, the point we want to clear up is: If copper pipe is to be used, what in your opinion is the proper requirement for the fittings?

A. All fittings—all pipe shall be threaded and all fittings non-ferrous metal, and soldered; the joints soldered.

Q. Is that your opinion as to what is required?

A. Yes, sir; that is if proper pipe is used instead of tubing.

Q. Could you determine whether or not the fittings have been soldered?

A. I can't tell unless you take them apart, and then it might be they have been under such intense heat that all the solder is melted out;—

Q. Captain, we have been talking about the petcock, that you said in your opinion must have been affixed to this Exhibit No. 17; and you were asked some questions about the draining off of the water from the bottom of such a strainer, by the drawing out of a plug. What provision should be made in a device of this kind, to prevent the discharge of gasoline from the pipe, when the plug is open?

A. Well, you could have a union or a valve on the tank side of that, and two unions; take the whole strainer out and dump it.

Q. In other words, this—

A. That could be done.

Q. This strainer could be provided with valves on each side—

Mr. Underwood:

If your Honor please, let's let the witness do the testifying.

The Court:

I think that is proper.

Q. Now Captain, let me put it to you this way: You were asked by Mr. Underwood whether there was any provision in these rules that prohibited the use of the pet cock on the bottom of this strainer. I call your attention to subdivision (d) of Section 2 on page 48, and ask you to look that over and tell us what the effect of that provision is.

A. The strainer of approved type; with bolted or dogged bonnet, shall be fitted in the feed line within the engine compartment and supported to take its weight off the line. A shutoff shall be fitted on each side of strainer to permit opening and cleaning. But that's the big strainers, not this little type.

(Thereupon recess was taken until 9:30 a. m. of the following day.)

March 23, 1939, 9:30 A. M.

Convened pursuant to adjournment.

Appearances same as heretofore noted.

1098 Thereupon: J. N. PATTEN a witness produced in behalf of the Libelants, resumed the stand and was examined and testified further as follows:

Re-Direct Examination (Cont'd.)

By Mr. Matteson:

Q. Captain, in your direct examination yesterday you stated that a pet-cock on the bottom of a strainer, such



as this Exhibit No. 11, would in your opinion be improper, and on cross examination you were asked whether there was any specific prohibition against strainers in the rules, Libelants' Exhibit No. 97. Does it make any difference in your opinion which you expressed, that a pet cock on the bottom of such a device would be improper, whether or not there is any specific prohibition in the rules?

A. No, sir. I request that they be removed, the same as on the bottom of a gas tank.

Q. Yesterday in cross-examination Mr. Underwood asked you whether or not a solid plug fitted in the bottom of a device such as this appearing on Exhibit 17 would be likely to wiggle loose as a result of vibration, and I think that your answer was "ye". Is there anything that you wish to say about that?

A. I did say "yes", but I was mistaken. I thought he had reference to a pet cock plug properly inserted and set up with a wrench which wouldn't wiggle loose.

Q. Yesterday on cross examination Mr. Underwood examined you with respect to the text of rule 1 (i) on page 47 of Libelants' Exhibit 97, which reads as follows:

"Shut-off valves or cocks of approved type, such as those having ground seats or plugs, shall be placed in the supply line from tanks. One valve shall be placed as close to the tank as practicable, another as close to the carburetor as practicable. If shut-offs are of the cock type they shall be spring seated and provided with stops to indicate the open and closed positions."

Is that in reference to pet cocks?

A. No.

Q. What is the shut-off valve of pet cock type?

A. It is a plug with a spring on the bottom so as to keep the tension on the plug to keep it tight.

Q. If it is a shut-off I take it that it would have a valve in the line?

A. In the main feed gas line.

Q. There were a couple of measurements that I did not get from you yesterday. Captain, did you measure the size of the hatch opening in the deck above the engineroom of the Seminole as it appeared in the wreckage on board the Seminole?

A. I did; the hatch opening—

Q. What is the size of that, Captain?

A. The hatch opening was 24 inches by 24 inches; that is the gross hole in the metal.

Q. That is the hole in the metal there? (Indicating.)

A. Yes.

Q. Did you measure the size of the sky-light opening?

A. Yes; that was 29 inches by 43 inches.

Q. You were shown these exhibits, Libelants' Exhibits 2 and 17, and you were asked whether you could say positively that any of these connections shows in these exhibits did leak, and I think you answered that you could not say positively. Can you tell us whether in your opinion it would be probable that they would leak.

Mr. Underwood:

I object to that on the ground that it is speculative. He asked him whether it was probable that something might have happened before the fire, his testimony being based upon the condition of physical things that had been through a very hot fire. It is highly speculative and improper. The issue in the case is not whether they might have leaked but whether they did leak.

Mr. Botts:

To us, if your Honor please, it seems that the witness having qualified as an expert could not perhaps testify that these particular pipes would or would not leak, but he could certainly testify as to whether or not a pipe assembly of that character would or would not probably

leak, and I take the position, if your Honor please, that that is clearly admissible.

The Court:

I will overrule the objection.

A. In the first place, I don't think this is a good job of pipe fitting—

Q. Just answer the question.

A. Yes, I think it is probable that they might have leaked, with all of those fittings.

Mr. Matteson:

That is all.

By Mr. Botts:

Q. Captain, I would just like to ask you two questions: from your observation did you make any measurements to determine the distance above the engineroom floor that the bottoms of the gasoline tanks occupied; did you make such measurements?

A. I don't think so, but I could guess pretty close.

Q. I was going to ask if from your examination you could give us the approximate distance above the engine-room floor.

A. I would say about twenty-four inches, somewhere in there.

Q. I believe you said,—or someone said—perhaps not you—that when the Seminole was sunk by the flow of water into it by the fire department that the tops of her gasoline tanks remained above high tide. I wonder if you could tell me the approximate distance above high tide that these tanks occupied?

A. When the stern of the vessel was submerged, I should say the tops of those tanks were above the water level perhaps two and a half feet or possibly three feet. I did not measure it.

Mr. Boots:

That is all.

By Mr. Matteson:

Q. Captain, I notice I overlooked some other measurements. Do you know the dimensions of the engineroom of the Seminole as it appears in the wreckage?

A. It was 16 feet and 6 inches by 18 feet.

Q. Which is the 18 feet; is that fore and aft?

A. Yes.

Q. And the 16 feet six inches is the other?

A. Yes.

Q. Does that include the width of the alleyway?

A. No.

Q. What is that?

A. That is 35 inches in the clear; they had a web frame there.

Mr. Matteson:

That is all.

#### Re-Cross Examination.

By Mr. Underwood:

Q. Captain Patten, what gasoline-driven boats have you been employed on as an engineer?

A. I will have to get that list. Very few gasoline boats?

Q. How many?

A. You mean launches and everything propelled by gasoline?

Q. If you tell me how many, Captain, then I am going to ask you what they were like and how they compared with the Seminole. Tell me whether you have ever been on one of the house-boat type similar to the Seminole.

A. I was on one; I ran a commuter over to Hell's Gate, but that was only a relief job; I relieved the captain on that commuter for about eight days.

Q. My question was, captain, on what gasoline boats have you ever been employed as engineer?

A. None.

Q. Which is stronger, copper pipe or brass pipe?

A. You mean tensile strength?

Q. Yes.

A. I would say the brass pipe was stronger in tensile strength.

Q. Which is harder?

A. Brass.

Q. You have to use brass fittings on copper pipe, don't you?

A. Right.

Q. That is because you can't set up tight to copper as you can with brass?

A. That is right.

Q. And that is because copper is softer than brass?

A. That is right.

Q. And that's one reason you have to solder copper, isn't it?

A. Yes; it is an added safety.

Q. Of course, Captain, if you use copper pipe in an installation such as that on the Seminole you would have to use fittings in getting around the corners, wouldn't you?

A. No. You can bend copper pipe.

Q. How much?

A. Not as readily as you can tubing, but you can put a pretty nice bend in copper pipe.

Q. Could you make a right angle bend with copper pipe?

A. Not with any pipe.

Q. Could you make a 45-degree bend with copper pipe?

A. With proper bending tools.



Q. Just how do you do that, Captain?

A. I would have to draw a picture.

Q. Tell me what tools you would use to put a 45-degree bend in a piece of copper pipe.

A. Copper bending tools.

Q. Tell us what they look like.

A. It has a handle on it, and it is curved out so that you won't crush the pipe, and you insert the pipe in this hook and then you bend your pipe. You cannot make a sharp 45-degree bend, but you can put a 45-degree bend in copper pipe, but not a sharp 45-degree bend.

Q. You mean you can put a gentle curve on a piece of copper pipe of long radius?

A. I didn't say long radius. You can put a 45-degree bend in the pipe, but not a sharp 45-degree bend.

Q. Do you regard that as good practice?

A. What do you mean by good practice?

Q. You have told the Court many things about good practice. Do you know what good practice means?

A. Yes.

Q. Would you regard it as good practice to put a 45-degree bend in copper pipe of a short radius?

A. It is not necessary to do it.

Mr. Underwood:

Will you read him the question, please?

(Preceding question read by the Reporter as above recorded.)

A. I don't think a good mechanic would attempt such a thing on either copper pipe or tubing.

Q. As a matter of fact, Captain, if you are going to use pipe instead of tubing you would have to have just as many fittings as you would for copper pipe for any particular job, wouldn't you?

A. No, sir.

Q. Why not?

A. You can make bends on copper pipe that you wouldn't attempt to make on brass pipe or iron pipe.

Q. I show you exhibit No. 2, Captain, and call your attention to the two 90-degree bends in that pipe. If you used copper pipe you would have to have two 90-degree elbows to make such a bend, wouldn't you?

A. No; I would come up here (indicating) and make a nice angle bend.

Q. Assuming, Captain, that this pipe at this point runs up to a bulkhead or a frame on an angle and has to go around it, is it not a fact that you would have to use two 90-degree elbows to get around that frame?

A. No, sir.

Q. You would not?

A. No, sir.

Q. Why not?

A. Because I would come across here to make it meet.

Q. Making two 90-degree bends in the copper pipe?

A. It would be two 45's.

Q. Captain, I have drawn three lines on a piece of paper here, and I will ask you to assume that this is a plane view of a bulkhead. In order to get from the gas lines to the motor you would have to run a pipe along that bulkhead, in that bulkhead and along that bulkhead from "X" to "Y". How do you get around the bend with copper pipe?

A. This would be the proper way to put it in (indicating).

Q. I will make that line heavier, following substantially your marks.

A. That's right.

Q. You would make two 45-degree bends in the copper pipe and use no fittings?

A. Except on the ends.

Q. You would use no fittings to go around this mark (indicating)?

A. There is no necessity to go around that corner.

Q. You don't think so?

A. No, sir.

Mr. Underwood:

Mark this for identification.

(Diagram above referred to was marked Respondents' Exhibit "N" for identification.)

Q. Would you do that with brass pipe?

A. Yes, you could anneal brass pipe and make that bend.

Q. Captain, just what make of valve would you use for gasoline?

A. Jenkins or Lunkenheimer or any approved gasoline valve.

Q. You say "gasoline valve". I want you to tell me what model number of Jenkins or Lunkenheimer or other manufacture—

A. If I had a catalog I could perhaps do that, but I do not carry numbers in my head.

Q. When you say "gasoline valve" just what do you mean, Captain?

A. Valves are made for different purposes, some for steam and some for water.

Q. Can you identify any particular valve that is made for gasoline?

A. Possibly; do you have a catalog?

Q. Can you remember the manufacturer or the model number or describe for me any particular valve that is made for gasoline?

A. No, but I could pick one out for you.

Q. Can you draw one?

A. I am not very much of a draftsman.

Q. What, Captain, according to your idea is the characteristic of a gasoline valve?

A. Well, I wouldn't approve—

Q. I didn't ask you what you would approve. I asked you, Captain, what is the characteristic of the gasoline valve that makes it any different from any other valves?

A. Well, it must be of the needle valve type, which is a sharp angle, with no fibre seat, and no flat seat where any grit would keep your valve open.

Q. Those are the two characteristics?

A. That is two of them.

Q. Any more?

A. I would want a good packing gland on a gasoline valve.

Q. Anything else?

A. I don't approve of a loose gasoline valve on a stem.

Q. That is not the particular characteristic of a gasoline valve which you want in a valve stem pipe?

A. It must be made absolutely tight.

Q. So we get down to the needle type and the ground seat?

A. Yes.

Q. Those are the two principal characteristics, is that right?

A. Yes, sir.

Q. Now, if you get a piece of grit or something of that sort in a needle valve do you say there will be no leak?

A. No. In the needle type that grit will pass on, whereas it won't on a flat surface valve.

Q. You don't think the flow will carry a piece of grit from a valve with a flat seat?

A. Not if it gets embedded at all.

Q. If it gets embedded in the needle valve it won't go through, will it?

A. It would be more apt to.

Q. If you get a piece of grit in a needle valve a needle valve will leak the same as the flat seat valve until you get the grit out, won't it?

A. That is right.

Q. Do you condemn anything but a ground seat valve for gasoline?

A. I do.

Q. You think that no composition seat is proper for gasoline, is that right?

A. Are you mentioning plug valves too? Plug valves with a spring on the bottom is all right.

Q. With composition seats?

A. Not with composition seats.

Q. Do you condemn all composition seat valves for gasoline?

A. Yes.

Q. There is no such thing as a proper gasoline valve if it has a composition seat?

A. No, sir, not in my opinion.

Q. Do you know of any valve with a composition seat that is proper for gasoline?

A. Approved?

Q. Yes.

A. Not that I know of.

Q. Do you deny that such a thing exists?

A. No, I don't, but I haven't come across any in my experience.

Q. I am not clear, Captain Patten, just where we stand on this strainer. Look at this again, Libelants' Exhibit 17; look at it carefully; look at that hole in the bottom there, in the bottom of the strainer, and tell me what you see; do you see the fitting on there?

A. That was the threaded end of a petcock.

Q. And you will stake your reputation on that, will you?

A. I will. If there is any doubt about it I can have it taken apart and prove it to you.

Mr. Underwood:

That is all.



Mr. Botts:

I have no further questions.

Mr. Matteson:

That is all, Captain.

(Witness excused.)

1111 Thereupon: JOHN THOMAS a witness previously called by the Libelants, was recalled and was examined and testified as follows:

Direct Examination.

By Mr. Matteson:

Q. Mr. Thomas, I want to ask you this: did you on the night of June 24, 1935, at the Memorial Hospital, Fort Lauderdale, Florida, in the presence of Mr. Fred Botts, Captain J. N. Patten and Mr. Garry Miller, who are all here, about 8:30 in the evening, make in words or in substance the following statements which I will read to you sentence by sentence—

The Court:

Is Mr. Miller here?

Mr. Botts:

Yes.

The Court:

He is in the Courtroom?

Mr. Botts:

He is an attorney, and it has not been the usual practice, if your Honor please, to invoke the rule relative to attorneys.

Mr. Jones:

If there is any doubt about it, you might ask him to retire.

Mr. Underwood:

I have no objection.

The Court:

You do not object to him remaining?

Mr. Underwood:

I have no doubt that his testimony will be as it will be, quite apart from his appearance.

The Court:

You may proceed.

(By Mr. Matteson):

Q. Did you at about 8:30 in the evening, on the night of June 24, 1935, at the Memorial Hospital, Fort Lauderdale, Florida, in the presence of Mr. Fred Botts, Captain J. N. Patten and Mr. Garry Miller, who are all here, make in words or substance the following statements which I will read to you sentence by sentence:

"My name is Johnnie Thomas."

Did you make that statement?

A. I don't remember what I said that night. I have no recollection.

Q. Did you make the following statement, in words or in substance, "On Monday, June 24, 1935, I went on board the Yacht Seminole at Pilkington's Boatyard, Fort Lauderdale".

Did you make that statement?

A. I don't remember.

Q. "I accompanied one Captain Abel in order to inspect a netting on the rear end of the boat so that I could install a similar one on another boat for Mr. Phipps".

Did you make that statement?

A. I don't remember making any statement like that.

Q. "Captain Abel went down toward the engineroom to inspect the boat while he was aboard".

Did you make that statement?

A. I don't remember making it.

Q. "I could smell a feint odor of gasoline and warned him to be careful as one always has to be very careful on a boat which is laid up."

Did you make that statement?

A. I don't remember making that statement.

Q. "I was looking at Captain Abel through the engine-room window when he threw a knife switch to get light to inspect the boat."

Did you make that statement?

A. I don't remember making it.

Q. "The switch arced and there was immediately an explosion".

Did you make that statement?

A. I don't remember making that statement in the hospital at all.

Q. Did you make that statement at any time?

A. I think I did here in the Court.

Q. "The switch arched and there was an immediate explosion"; is that the statement?

A. We are now at the hospital?

Q. I am asking you if at any time you made that statement?

A. I don't remember making a statement like that in the hospital?

Q. Do you remember making that statement at any time?

The Court:

If this is for the purpose of impeachment you must give the time and place, Mr. Matteson.

Mr. Matteson:

All right, sir.

The Court:

This is only for the purpose of impeachment, as I understand it.

Q. "I came at the request of Captain Abel who was employed by Mr. Phipps to see how to do the work on Mr. Phipps' boat".

Did you make that statement?

A. I don't remember making that statement, no, sir.

Q. "Captain Pilkington had warned us not to smoke and neither or Captain Abel or I were smoking or struck a match".

Did you make that statement?

A. I don't remember making that statement, no, sir.

Q. You understand, Mr. Thomas, that in all of these questions I have referring to this particular occasion at the Memorial Hospital at Fort Lauderdale, at 8:30 P. M., on the evening of June 24, 1935; you understand that is what I have been referring to?

A. Yes, sir.

Q. And you understand that I have asked you whether you made these statements in the exact words that I have read, or in words of similar import?

A. I don't remember making these statements.

Q. Do you deny making these statements?

A. I don't remember making these statements; no, sir.

Q. What I want to know is; Mr. Thomas, do you deny making these statements?

A. I was unconscious there at the hospital; I don't know what I said or what I did or anything; I had no recollection of time.

Q. Then I understand you do not deny them?

A. I don't remember making these statements.

Q. I want you to answer me as specifically as you can, Mr. Thomas: do you now deny that you made any of these statements at the hospital?

Mr. Underwood:

If your Honor please, I think the witness has been asked that question many times, and he has had every opportunity to say yes or no, and he said he could not remember. I think he ought not to be subjected to any further ordeal in that particular connection.

The Court:

I think you have asked him, Mr. Matteson, three or four times and he has answered that he has no recollection of making these statements. I will sustain the objection.

The Court:

Mr. Thomas, do you remember being visited by these three men that evening?

The Witness:

No, I don't; I know there was some people in the room, but I couldn't say who it was or anything.

The Court:

Was Dr. Blount in the room at that time?

The Witness:

I don't remember, your Honor.



(By Mr. Matteson):

Q. I want to call your attention to this statement that I read to you: "The switch arced and there was immediately an explosion". Is that a true statement?

A. When Captain Abel pushed the switch there was some sparks on one side of it and the explosion immediately followed.

Q. Do you say this is a true statement or not: "The switch arced and there was immediately an explosion."

The Court:

Did he answer that?

The Witness:

Yes, I did.

The Court:

You asked him was that the fact, and he answered it, as I understand it?

Mr. Matteson:

He answered it in a round-about way, your Honor.

Mr. Botts:

I think he should answer that yes or no and then make his explanation, if your Honor please.

Mr. Underwood:

We have been over this many times.

Mr. Matteson:

It is a question of interpretation perhaps of his language, and I want to get his idea of what this means.

The Court:

That question is not a matter of impeachment now?

Mr. Matteson:

No.

The Court:

You are asking him if that was the fact.

Mr. Botts:

It is not impeachment directly, if your Honor please.

The Court:

Well, what did you ask him?

Mr. Matteson:

I asked him whether this was a true statement: "The switch arced and there was immediately an explosion".

The Court:

I just want to keep the record straight.

Mr. Matteson:

That is all.

By Mr. Botts:

Q. Now, Mr. Thomas, I would just like to ask you not with reference to what is supposed to have been said at the hospital. I am asking you now as to what you now state the facts to be. It is true that on June 24, 1935, you went on board the Yacht Seminole at Pilkington's Yacht Basin; that is true, isn't it?

A. Yes, sir.

Q. It is also true that you went on board the Yacht accompanied by Captain Abel; is that true?

A. Yes, sir.

Q. And it is also true that you went on board the yacht to inspect or to look at a rope netting on the rear of the boat, the rear of the Seminole?

A. Yes, sir.

Q. And the purpose was to enable you to install a similar rope contrivance on another boat of Mr. Phipps; that is true, is it?

A. On another boat.

Q. On the boat of Mr. Phipps, the Iolanthe; isn't that true?

A. I don't know whether Mr. Phipps owned the boat or not; I couldn't swear to it.

Q. But he did own the Iolanthe?

A. That is right.

Q. It is true that Captain Abel went down to the engineroom; that is true, isn't it?

A. Yes, Captain Abel went in the engineroom.

Q. As I understand it, Mr. Thomas, you now deny that you went down in the engineroom below and smelled a feint odor of gasoline?

A. I smelled a bilgy odor.

Q. Do you deny that you smelled gasoline?

A. Yes.

Q. Do you deny that you warned Captain Abel to be careful?

A. Yes; I told Captain Abel to be careful.

Q. It is true, is it not, that you were looking at Captain Abel when he was in the engineroom; that you were looking at him through the engineroom window?

A. That is right.

Q. That is true, is it not?

A. Yes.

Q. And it is true that you saw him throw or push a knife switch; that is true, isn't it?

A. Yes, I saw him push the switch.

Q. Is it true that neither you nor Mr. Abel were smoking?

A. Yes; as near as I can remember we were not smoking.

Q. And as I understand you now say Captain Abel in fact struck a match?

A. Yes, sir.

Q. Now, Captain Thomas, I may be mistaken in my recollection is that on your testimony the other day you stated that you recollected the three men who have been mentioned came into the room, but you did not recollect what was said. I could be mistaken about that. Now, Captain Thomas, I want to get you to make that plain; do you recollect the circumstances of the three men that have been mentioned coming in to see you at all, or do you recollect that circumstance?

A. In the Fort Lauderdale Hospital?

Q. Yes.

A. No, I don't.

Q. You don't recollect—

A. I have a recollection of seeing people in the room, more than once.

Q. But you don't recollect the three persons, myself and the two other gentlemen coming in?

A. No, sir, I don't.

Q. I will ask you this: do you recall Dr. Blount coming in and talking to you about the hour of 8:00 to 8:30 on that night?

A. No, sir.

Q. You don't recall talking to Dr. Blount at all?

A. No, sir.

Q. You know Dr. Blount, of course?

A. I don't believe I could recognize the man if I saw him right now.

Q. Do you recall the circumstances of being administered ether while they gave you some attention; do you remember that circumstance?

A. Yes, I do.

Q. Do you recall that sometime after the ether was administered that you had a vomiting spell; do you recall that?

A. No, sir.

Q. And do you recall them giving you some orange juice?

A. No, I don't.

Q. You don't recall that?

A. No, sir.

Mr. Botts:

That is all.

Mr. Underwood:

I have no questions, if your Honor please.

The Court:

All right; call your next witness. Can Captain Thomas be excused?

Mr. Botts:

I think he had better stay here, if your Honor please.

The Court:

Captain, you had better remain in attendance.

Mr. Matteson:

Call Mr. Miller.

1120 Thereupon: GARRY MILLER was called as a witness by the Libelants, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Matteson:

Q. Your full name is?

A. M. Garry Miller.

Q. Where do you live, Mr. Miller?

A. Fort Lauderdale.



Q. What is your occupation?

A. I am an attorney-at-law.

Q. You are a member of the Bar of this State?

A. I am.

Q. Where is your office?

A. My office is in the County Courthouse Building at Fort Lauderdale.

Q. You hold an official position, do you?

A. I do.

Q. And what is that position?

A. I am the County Prosecuting Attorney of Broward County.

Q. Do you also conduct private practice?

A. I do.

Q. Did you hold the office of County Attorney in 1935?

A. I did.

Q. Do you recollect the fire at Pilkington's shipyard on June 24, 1935?

A. I do.

Q. Will you tell us what you heard of that fire and what you did?

A. I was at my home at the lunch hour when I heard the explosion; I judge it was between 1:00 and 1:30; probably between 1:00 and 2:00 o'clock.

Q. Where is your house located with respect to the Pilkington Shipyard?

A. My house is about three miles from the shipyard, I would judge.

Q. What did you do after that?

A. I heard the explosions and I also saw a column of smoke arise almost due west from my home, so I got in my car and drove immediately to the scene of the explosion.

Q. What did you observe when you got there?

A. The entire shipyard and boats were in flames when I got there; I might say from one end to the other.

Q. What did you do?

A. I first saw Mrs. Pilkington up there—I have known the Pilkingtons for years and have represented them in some legal matters—she was very much upset—

Mr. Underwood:

If your Honor please, may the witness be instructed not to describe the physical condition unless expressly asked, and not to tell any of the conversation—

The Court:

Yes. If a point is going to be made on that, I think you should not volunteer, in answering questions, a description of the condition of any person with whom you conversed.

Mr. Matteson:

If your Honor please, it seems pretty strict to exclude the conduct and the appearance of the people that he saw and communicated with and dealt with there at that time.

The Court:

It is not stricken. What he said is in the record; it is not stricken.

Mr. Matteson:

Of course the request was with respect to instructing the witness to avoid describing the appearance and conduct—

The Court:

Except in answer to some direct question from you, at which time the point will be presented.

(By Mr. Matteson):

Q. You said you talked with Mrs. Pilkington.

A. Yes.

Q. Did you talk with anyone else or see anyone else there?

A. I saw the Sheriff there and I conferred with him; I asked the Sheriff to notify the Coroner down here, because I believed there was probably a death.

Q. Did you do anything else?

A. I talked to Captain Pilkington, I think, and probably to the fire chief and different officials and men around there from time to time; it was quite an exciting time, you know.

Q. Now will you tell us what you observed with respect to Mrs. Pilkington and Captain Pilkington on that occasion?

A. Well, Mrs. Pilkington was crying and was very nervous, and Captain Pilkington was very nervous and upset about their shipyard being burned up and the boats—

Q. Did you communicate with Captain Patten at any time?

A. Yes. I inquired through Hunter Lyon of Miami as to employing someone who could ascertain the cause of the explosion or the fire; and Captain Patten was brought to the fire in that manner.

Q. Did you yourself communicate with Captain Patten?

A. I don't recall whether I talked to him over the telephone or not; but I did communicate with him.

Q. Did Captain Patten come there to the shipyard?

A. Yes, he came to the shipyard.

Q. Now will you tell us what else occurred during that afternoon and evening?

A. On account of my position as prosecuting attorney I suggested that probably the Pilkingtons should have other counsel in addition to me. I never like to handle the civil side of a suit if there is any criminal responsibility. At that suggestion Mr. Botts was employed and he came over the day of the fire, and likewise Captain Patten. I don't recall who came first, but they came in the course

of the evening, and in order to attempt to ascertain the cause of the explosion we decided to interview the only witness, the only eye-witness, who was Mr. Thomas. So at about 8:30 or 9:00 o'clock that night, Mr. Botts, Captain Patten and myself drove to the Memorial Hospital in Fort Lauderdale and interviewed and had a conversation with Mr. Thomas, who was the boy with Captain Abel at the time of the explosion.

Q. Did you see or have any communication with Dr. Blount about that time?

A. Yes. When we came to the hospital we were advised of the name of the physician attending Mr. Thomas; we ascertained that the physician's name was Dr. Blount. We attempted to get in touch with him on the telephone, but just about that time Dr. Blount appeared where we were, and we gained permission of Dr. Blount to see Mr. Thomas.

Q. Where did you see Mr. Thomas?

A. Mr. Thomas was in a room in the hospital at Fort Lauderdale.

Q. Did you go to that room?

A. Yes.

Q. When you say "we" who do you mean?

A. Mr. Botts, Captain Patten and myself.

Q. When you went to that room, Mr. Miller, will you tell us what you saw and what took place?

A. I believe, as I recollect, there was present a nurse when Captain Patten, Mr. Botts and I went in there. We first expressed our regret for Mr. Thomas' injury—

Mr. Underwood:

If your Honor please, I do not understand that this question calls for the conversation. Am I right about that?

Mr. Botts:

Not yet.

Mr. Underwood:

If he is going to tell what words passed, I think it ought to be in response to questions.

Mr. Botts:

You are absolutely right.

Mr. Underwood:

If that is clear to everybody, including the witness—

The Court:

Of course the witness understands the instructions already given, and he will of course observe them.

(By Mr. Matteson):

Q. I want to ask you if at that time in your presence John Thomas made the following statements: "My name is Johnnie Thomas".?

A. He did.

Q. "On Monday, June 24, 1935, I went on board the Yacht Seminole at Pilkington's Boatyard, Fort Lauderdale,"—

Mr. Underwood:

Just a minute. If your Honor please, I object to that on the grounds that I have heretofore mentioned with respect to similar questions, attempting to impeach Thomas, without the necessity of restating the objections.

The Court:

The objection is overruled.

Mr. Underwood:

May the objections apply to this whole evidence?



The Court:

Yes. Let it be understood that to each of these questions the same objection is made and the same ruling of the Court.

A. That is substantially his statement.

Q. "I accompanied one Captain Abel in order to inspect a netting on the rear end of the boat so that I could install a similar one on another boat for Mr. Phipps." Did Mr. Thomas in words or substance make that statement in your presence?

A. In substance he did.

Q. "Captain Abel went down toward the engineroom to inspect the boat while he was aboard."

Did Mr. Thomas in words or substance make that statement?

A. In substance he did.

Q. "I could smell a feint odor of gasoline and warned him to be careful as one always has to be very careful on a boat which is laid up."

Did he make that statement in words or substance?

A. In substance he did.

Q. "I was looking at Captain Abel through the engine-room window when he threw a knife switch to get light to inspect the boat."

Did he make that statement in words or substance?

A. Yes.

Q. "The switch arced and there was immediately an explosion".

Did Mr. Thomas in words and substance make that statement?

A. He did.

Q. "I came at the request of Captain Abel who was employed by Mr. Phipps to see how to do the work on Mr. Phipps' boat."

Did Mr. Thomas in words and substance make that statement?

A. Yes, he did.

Q. "Captain Pilkington had warned us not to smoke and neither Captain Abel or I were smoking or struck a match."

Did Mr. Thomas make that statement in words or substance?

A. He did.

Q. Was anything done to reduce these statements to writing?

A. Yes. We went to the hospital office on the first floor and Mr. Botts, Mr. Patten and I in conference agreed upon the statement as we all recollected to the best of our recollection to what he said, and Mr. Botts reduced the statements to writing.

Q. How soon after the interview did they do that or did you do that?

A. Immediately.

Q. Whose language was used in the written statement?

A. That is in substance the language of Mr. Thomas.

Q. I mean in putting it down on paper who chose the words?

A. Captain Patten, Mr. Botts and I formulated the words to the best of our recollection from what Mr. Thomas stated.

Q. Do you recognize this paper which I show you?

A. I do.

Q. Libelants' Exhibit 96 for identification?

A. Yes.

Q. What is that?

A. This is a statement written by Mr. Botts of the text of Mr. Thomas' statement made there in the hospital.

Q. Have you read this statement?

A. I read the statement there that night; I referred to it again this morning. Probably I have seen it since then, but I don't recall definitely where or when.

Q. Is this a correct transcript of the substance of that interview?

A. It is correct.

Q. I wish you would tell us, Mr. Miller, what you observed while you were in the room with Mr. Thomas as to Mr. Thomas' condition?

Mr. Underwood:

May the witness be instructed not to indulge in conclusions; in other words as "fits" or "good shape" ought not to come from the mouth of this witness.

The Court:

The Court does not see any occasion to make any additional instruction at this time. You may proceed.

Mr. Matteson:

Repeat the last question.

(Thereupon the preceding question was read by the Reporter as above recorded.)

A. Mr. Thomas was lying in the bed; he was awake and able to talk and did talk and made the statements substantially as they were written in that paper.

Q. So far as you could observe was there any doubt about his lucidity at that time?

A. I entertained no doubt at all.

Q. Mr. Miller, did you again visit the shipyard of Captain Pilkington after this interview?

A. Yes.

Q. When did you go there again?

A. I don't recall whether I returned to the shipyard that night, but I returned the following night; probably about eleven or twelve o'clock.

Q. What did you observe at that time?

A. They were pumping out the Seminole and had quite a bit of water out of her at that time. I observed the prevalence in the atmosphere of gasoline fumes and odors; it seemed to be a mixture of gasoline and oil.

Q. Where were you when you made that observation?

A. I was at the boatyard.

Q. Were you in the vicinity of the house or on the shore?

A. I was right on the shore of the Basin.

Q. And where with respect to Captain Pilkington's house?

A. I would say I was twenty-five to fifty feet from the house.

Q. What was the condition of the vessels in the yard other than the Seminole at that time?

A. They had burned down to the water-line, as I recall, had been submerged.

Q. Do you recall the direction of the wind at that time?

A. I cannot state that.

Q. Could you observe the direction from which this odor came?

A. The odor was coming from a northerly direction; I was standing due south of the boat.

Q. You are referring to the Seminole?

A. Yes, to the boat Seminole.

The Court:

Was that before or after the body had been recovered?

The Witness:

That was before the body had been recovered.

(By Mr. Matteson):

Q. Did you remain there that night?

A. I remained there probably two hours.

Q. Were you there when the body was recovered?

A. No; the Coroner had agreed to be out there the next morning about the time they would find the body, and he was there, so I understand.

Q. Ybu did not return?

A. No, I did not return.

Mr. Matteson:

That is all.

### Cross Examination.

By Mr. Underwood:

Q. When you smelled the odor of gasoline you were to the southward of the entire Yacht Basin, or what remained of it?

A. I was on the southerly bank; the Basin is quite a long Basin; part of the Basin would be northeast and part of it would be northwest and part would be almost due west.

Q. The Seminole was across the Basin from where you were standing?

A. Almost opposite from where I was standing; yes.

Q. What gasoline may have been coming from the tanks of other vessels that were submerged you don't know, do you?

A. No, I don't know that.

Q. Were you at first interested in this fire in your official capacity or in your private capacity as Mr. Pilkington's lawyer?

A. I would say that I went there as a spectator.

Q. Did you at any time have any thought of the possibility of prosecuting anyone in connection with the death of Captain Abel?

A. No; I didn't think of prosecuting anybody at the time. I just made observations that came to one naturally in my position. If there is any criminal responsibility



one tries to ascertain whether there is such responsibility and who is responsible.

Q. Were you endeavoring to do that at any stage?

A. Oh, yes.

Q. When did you begin that?

A. I would say about two or three hours after the conflagration.

Q. And when did you conclude that?

A. I would say it would have been merely a mental conclusion. I made no record and had no documents drafted to sign my name to. It would have been purely a mental conclusion.

Q. At some point you did come to the conclusion that there was nothing that you had to do in your official capacity in this case?

A. Yes; after the Coroner had decided there would be no Coroner's inquest.

Q. And that was on the 26th day of June?

A. I don't recall when the Coroner decided not to have an inquest, but it was shortly after the finding of the body.

Q. Was it the same day or the following day?

A. Either the same day or a day or two thereafter.

Q. Can you fix it closer than that?

A. No, because I would have to refer to the Coroner's report.

Q. Did you instruct anybody to deliver over to you any equipment or pieces of material that were removed from the Seminole?

A. I don't believe I gave any specific instruction.

Q. What general instructions of that nature did you give?

A. I expect that I conferred with the Sheriff and the Coroner to give me any information that they might obtain with respect to criminal responsibility.

Q. Did you instruct Captain Patten to remove and deliver over into your possession any pieces of materials that were removed from the Seminole?

A. I don't recall any such specific instructions.

Q. Did you give him any general instructions of that nature?

A. I don't recall at this time that I did.

Q. Was Captain Patten working for you?

A. Not in my official capacity; no, sir.

Q. Did you ask him to ascertain the cause of this conflagration?

A. I did.

Q. You did.

A. He was called in specifically for that purpose.

Q. By whom?

A. By me.

Q. Did the county pay him anything?

A. He wasn't called in in my official capacity; he was called in my representation of Captain Pilkington. The county didn't pay him anything.

Q. Do you know that Captain Patten removed certain pieces of material, Exhibits 11, 17 and 2, this can and this funnel, from the Seminole.

A. I don't know who removed those things from the Seminole.

Q. Were they delivered into your possession?

A. Some valves and fittings were brought to my office shortly after the fire and explosion.

Q. Were those these that you see here?

A. They seem to be the things that were brought into my office, yes.

Q. When did you surrender possession of those?

A. I don't recall; I know they were in my office a day or two or probably a week.

Q. Isn't it a fact, Mr. Miller, that you surrendered those pieces of machinery before you concluded that you would not have any official function to perform in connection with this fire?

A. Oh, no; I think they were surrendered—did you say before?

Q. Yes; I said before.

A. I was willing to surrender these things so far as the criminal investigation was concerned.

Q. Isn't it a fact that you surrendered those on the 21st day of June to Captain Patten?

A. I couldn't fix the date; sir.

Q. Do you deny that?

A. I can't remember the date; I can neither deny nor admit it. I have no record of the things being brought to my office or receipting for them.

Q. Do you remember a Mr. Riley and a Mr. Reynolds calling to see you in July, on the 31st day of July, 1935?

A. I believe I recall Mr. Riley coming there sometime; I don't know the date.

Q. Do you recall another man with him—a Mr. Reynolds?

A. No, I don't recall that.

Q. Do you recall refusing to deliver the material which had been removed from the Seminole to Mr. Riley at that time?

A. I don't believe that I had the articles at that time, though I am not sure about that.

Q. Do you recall refusing to deliver them at that time?

A. Yes; I didn't deliver anything to Mr. Riley.

Q. Did you not refuse to deliver them?

A. I don't recall a demand being made upon me for them.

Q. I show you a paper which bears at the top the date July 31, 1935, and ask you to read the typewritten portion of it, and not the handwriting on it. Did you receive that letter?

A. I don't recall receiving that letter. I think it is directed to Captain Pilkington.

Mr. Underwood:

May this be marked, please?

(The document above referred to was marked Respondents' Exhibit "O" for identification.)

Q. Do you say that you never saw that letter?

A. I don't recall seeing that letter, no, sir.

Mr. Botts:

May I see what it is. I may have some information about that myself.

Mr. Underwood:

Certainly. (Handing document to counsel.)

(By Mr. Underwood):

Q. Do you say that you told Mr. Riley or Mr. Reynolds that you no longer had the material that had been removed from the Seminole?

A. I don't recall such a statement.

Q. You don't remember what you told him?

A. No, I don't.

Q. Isn't it a fact that you didn't tell them that you no longer had it?

A. I am not sure whether I told them that or not; I don't recall whether I had them there at that time or not. They were not in my office very long; just a very short period.

Q. When you surrendered possession of that material to whom did you surrender it?

A. That I don't recall. I don't seem to have a receipt for it and I don't recall who got it. It was probably the man who brought it there.

Q. Captain Patten?

A. I am not sure whether Captain Patten brought it there or Carl Holm.

Q. One or the other?

A. Yes.

Q. And you surrendered these articles back to either Holm or Patten?

A. Probably to the person who brought it there.

Q. Did you know whose property it was?

A. I can only state it by hearsay.

Q. You understood that they came from the Seminole?

A. From what I was told.

Q. You knew that neither Captain Patten or Carl Holm represented the owner of the Seminole?

A. I generally understood that Carl Holm and Captain Patten—I am not sure who Carl Holm was investigating for, but Captain Patten was investigating for Pilkington.

Q. Nevertheless, Mr. Miller, you redelivered this property to someone who did not represent the owner of it?

A. I think Carl Holm was employed by Mr. Phipps to pump the boat out; I am rather of the impression that he was employed by Mr. Phipps to pump the boat out.

Q. Do you really think that?

A. Yes, that is my recollection of it, that Carl Holm was pumping the boat out for the Phipps people, the owners of the boat, though I am not quite distinct about it; this has been quite awhile ago.

Mr. Underwood:

That is all.

Mr. Matteson:

That is all.

(Witness excused.)



1138        Thereupon: J. N. PATTEN a witness produced by the Libelants, was recalled and testified further as follows:

Direct Examination.

By Mr. Matteson:

Q. Captain Patten, I believe you have already testified that you were present in the Memorial Hospital at Fort Lauderdale, Florida, on the evening of June 24, 1935 when you, Mr. Botts and Mr. Miller visited the room of Johnnie Thomas. I want to ask you if on the occasion of that interview, at about 8:30 P. M. on that date, Mr. Johnnie Thomas in your presence made the following statements in words or in substance:

"My name is Johnnie Thomas. On Monday, June 24, 1935, I went on board the Yacht Seminole at Pilkington's Boatyard, Fort Lauderdale."

Did Mr. Thomas at that time in words or substance make that statement?

A. Yes; that is practically word for word, as I recollect.

Q. "I accompanied one Captain Abel in order to inspect a netting on the rear end of the boat so that I could install a similar one on another boat for Mr. Phipps."

Did Mr. Thomas at that time in words or substance make that statement?

A. He did.

Q. "Captain Abel went down toward the engine room to inspect the boat while he was aboard."

Did Mr. Thomas at that time in words or substance make that statement?

A. He did.

Q. "I could smell a feint odor of gasoline and warned him to be careful as one always has to be very careful on a boat which is laid up."

Did Mr. Thomas at that time in words or substance make that statement?

A. He did.

Q. "I was looking at Captain Abel through the engine-room window when he threw the knife switch to get light to inspect the boat".

Did Mr. Thomas at that time in words or substance make that statement?

A. He did.

Q. "The switch arced and there was immediately an explosion."

Did Mr. Thomas at that time in words or substance make that statement?

A. He did.

Q. "I came at the request of Captain Abel who was employed by Mr. Phipps to see how to do the work on Mr. Phipps' boat."

Did Mr. Thomas at that time in words or substance make that statement?

A. He did.

Q. "Captain Pilkington had warned us not to smoke and neither Captain Abel nor I were smoking or struck a match".

Did Mr. Thomas at that time in words or substance make that statement?

A. Yes, sir.

Q. I am not sure whether you testified before as to what you observed with respect to Thomas' condition at that time or not, but I will ask you at this time to tell us.

A. Thomas was laying in a hospital cot or bed; the room was darkened; there was no bright light on. I noticed a bandage around his head and around his neck; there was some minor bruises on his face, and possibly one of his legs was damaged but he had the covers up on that side and I could not see what was the matter with his leg.

Q. What did you observe as to whether or not Mr. Thomas at that time had full possession of his faculties?

A. He answered every question very lucid and clear, and after the first question was asked he went right on and told that story.

Mr. Matteson:

That is all.

#### Cross Examination.

By Mr. Underwood:

Q. Did he seem to be in any pain, Captain Patten?

A. Yes, I would say that the boy was in some pain.

Q. Not a great deal?

A. Yes, he was in some pain.

Q. Did his face show it?

A. From the evidence and cuts on his face he must have been in some pain.

Q. Did he grimace?

A. Well, the room was not lit up; I couldn't see his face very plain, and although I did not see any agonizing look on his face, I knew he was under some pain.

Q. Did he appear to be sleepy or tired?

A. No.

Q. He did not appear to be desirous of going to sleep?

A. No.

Q. What was the occasion for your departure from the room; had you gotten all that you wanted at that moment to get from Thomas?

A. I believe so, yes; I didn't question Thomas myself.

Q. Did the nurse tell you to go, tell you it was time to go, or did you go because you were finished?

A. That is correct.

Q. Nobody told you to go?

A. No, sir.

Mr. Underwood:

That is all.

Mr. Matteson:

If your Honor please, I am in somewhat of a difficult position, that is, Mr. Botts, the attorney for Mr. Pilkington, is the third man who was in the room, and I would like to call him as a witness to testify—

Mr. Botts:

I have no objection to telling you what I know, but there is a rule that is sometimes invoked that when an attorney appears as a witness he should thereafter retire as attorney. Now, when there has only been some minor testimony I have seen that rule waived. I am willing to testify, however, I do not care to have the rule invoked against me, that is, that I should not thereafter appear as counsel, and with that understanding I have no objection—

Mr. Underwood:

I would miss Mr. Botts' presence too much in this case to take advantage of that rule.

1143        Thereupon: FRED BOTTS was produced as a witness by the Libelants, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Matteson:

Q. Your full name is?

A. Fred Botts.

Q. Your home address?

A. 518 Northeast 56th Street, Miami, Florida.

Q. You are a member of the Bar of the State of Florida, are you?

A. Yes.

Q. And an attorney for Captain Pilkington in this case?

A. Yes.

Q. Do you recall the occasion of an interview with Mr. Johnnie Thomas at the Memorial Hospital in Fort Lauderdale on June 24, 1935?

A. I do.

Q. Will you state to us the circumstances leading up to that interview?

A. As a result of a telephone call I went to the Boatyard, arriving there sometime in the early evening. I would say somewhere between seven and seven-thirty o'clock. I saw a number of people there, and of course the subject of the fire was generally discussed. Among others that I saw there was Mr. Garry Miller and Captain Patten; of course Mr. and Mrs. Pilkington were there, and I think others. Eventually Mr. Miller, Captain Patten and I went down to the hospital for the purpose of trying to interview Mr. John Thomas in an attempt to ascertain if we could because of the explosion which started the conflagration.

Q. Who did you see at the hospital?

A. We first saw the head nurse. We attempted to get in touch with the physician—whose name I didn't recall



until I saw him yesterday—to ascertain whether or not the patient was in a condition to be interviewed, and to get his permission, which, of course, the hospital required. My recollection is that we failed to reach the physician over the telephone, and eventually we came in contact with this physician in the hall just off the main entrance, and ascertained that he had been in the building while we were attempting to locate him. We secured his permission to visit the patient for a short time.

While we were there, either in the patient's room or in the hall, we also saw Mrs. Thomas, the wife of Captain Thomas. My best recollection is that she was in the room while the interview took place, but I would not be sure about that. I know that Captain Patten, Mr. Garry Miller and the nurse were in the room at the time the interview took place. The room, as Captain Patten has said, was darkened in order to make it more comfortable for the patient; there was a light in there, but it was darkened.

Q. About what time did this interview take place?

A. I would have to state that my recollection is that it was somewhat later than Dr. Blount placed it; I think it was about nine o'clock, but it may have been anywhere from 8:30 to 9:30, according to my best recollection.

Q. On this occasion in the room of Johnnie Thomas in the Memorial Hospital at Fort Lauderdale, between approximately 8:30 and 9:00 o'clock did Johnnie Thomas in your presence make, in words or substance, the following statement: "My name is Johnnie Thomas. On Monday, June 24, 1935, I went on board the Yacht Seminole at Pilkington's Boatyard, Fort Lauderdale."

Did Johnnie Thomas at that time in words or in substance make that statement?

Mr. Underwood:

If your Honor please, I make the same objection to this entire line of questioning.

The Court:

Same ruling.

A. In substance. That does not reflect his exact words which were elicited by questions, but in substance he stated that.

Q. "I accompanied one Captain Abel in order to inspect a netting on the rear end of the boat so that I could install a similar one on another boat for Mr. Phipps".

Did Mr. Thomas on that occasion in substance make that statement?

A. In substance he did.

Q. "Captain Abel went down toward the engine-room to inspect the boat while he was aboard. I could smell a feint odor of gasoline and warned him to be careful as one always has to be very careful on a boat which is laid up".

Did Mr. Thomas at that time, in substance or words, make that statement?

A. He did.

Q. "I was looking at Captain Abel through the engine-room window when he threw a knife switch to get light to inspect the boat".

Did Mr. Thomas at that time in words or substance make that statement?

A. I remember particularly that he used the word "knife", and the word "arc" was his language.

Q. "The switch arced and there was immediately an explosion".

Did he in substance at that time make that statement?

A. He did.

Q. "I came at the request of Captain Abel who was employed by Mr. Phipps to see how to do the work on Mr. Phipps' boat."

Did Mr. Thomas at that time in substance make that statement?

A. He did.

Q. "Captain Pilkington had warned us not to smoke and neither Captain Abel or I were smoking or struck a match."

Did Mr. Thomas at that time make that statement?

A. He did, in substance.

Q. Will you tell us, Mr. Botts, how long the interview lasted and what you observed with respect to the condition of Thomas at that time?

A. I would say that the interview lasted a minimum of five minutes and a maximum of ten minutes.

Q. What did you observe with respect to Thomas' condition during that period?

A. He was in bed; he appeared to be in some pain, and his voice was not as husky as it might have been; he was in a good frame of mind and was cheerful, because he was at that time elated that he wasn't in the same condition that Abel was, that is, dead. He was in a perfect condition of mind, a lucid condition of mind, regretting, of course, his injuries, but glad they were not worse.

Q. I show you Libelants' Exhibit 96, and ask you if you recognize that?

A. Yes.

Q. What is that?

A. This is a statement that was written by me in the room at the hospital; I think it was the office; it was written immediately after Mr. Miller, Captain Patten and I came downstairs. While my hand wrote the words, each sentence, before it was written down, was discussed between Mr. Miller, Captain Patten and I so as to be sure that we all agreed that everything was said in there had actually taken place; so, while the words are written by me, the language is not mine; it is the combination of the language furnished by all of us, and every word in there was agreed to by each and every one.

Q. Does this exhibit represent a true statement of the substance of Thomas' statements to you at that time?

A. It does, and it represents the entire statement that he made with reference to the cause of the accident. We had other conversation with him in which we inquired as to how he felt and that kind of thing, but as to the circumstances of him going down there and the cause of the explosion, that is the entire statement which he made.

Mr. Matteson:

That is all.

### Cross Examination.

By Mr. Underwood:

Q. Did you go back upstairs after you had this paper prepared?

A. No, we didn't.

Q. You left Thomas because you had concluded your needs at the moment?

A. Right.

Q. You were not sent away from him?

A. Oh, no.

Q. How long have you been practicing law, Mr. Botts?

A. Twenty-eight years.

Q. How long have you been taking statements from witnesses?

A. Approximately the same length of time.

Q. Has it been your practice to take unsigned statements when you can get them signed?

A. We always, of course, prefer to get signed statements. I recollect—

Q. Did you take this statement back upstairs to Thomas that night and ask him to sign it?

A. No.

Q. Did you ever after that day present this statement to him and ask him to sign it?

A. No.

Q. Did you give it to anybody else for that purpose?

A. No.

Q. When did you first disclose the existence of this statement to counsel who represent the owners of the boats?

A. Well, I have never made any secret of it.

Q. When did you first disclose it?

A. The first time anybody asked me about it I told them about it.

Q. Was that in 1935?

A. Yes; wait a minute—

Q. Go ahead.

A. I gave a copy of that statement to Captain Patten; I think it was the next day, and my understanding from him was that he was representing some Underwriters of boat owners, so I would say that I delivered that to Captain Patten, and my understanding is that he communicated with the Underwriters immediately.

Q. This statement is written in the first person as far as Thomas is concerned?

A. Yes.

Q. Yet you have never, in almost the four years that passed, presented this to him since he left the hospital, and asked him to sign it?

A. That is right.

Q. So far as you know nobody else has, is that right?

A. I am certain no one else has because it stayed in my possession.

Q. Why didn't you take it back upstairs that night and ask him to sign it?

A. I am glad you asked that question. Mr. Miller, Captain Patten and I discussed that very thing. It was written with the idea of presenting it to him; then we discussed the question that he was in pain and decided that we would not go back and bother and wrack him again, and that is exactly the reason. It was written up



with the idea, with the thought in mind, of presenting it to him, and then we decided not to go back.

Q. You had not been asked to leave the room?

A. No.

Q. The doctor did not tell you to go?

A. No.

Q. And the nurse didn't run you out of there?

A. No.

Q. It was just the magnanimity of your heart that caused you not to bother him any more, is that right; is that true?

A. Yes.

Q. I am asking you if that is the fact?

A. You would probably not understand that when a man is in a suffering condition that you shouldn't worry him any more than possible.

Q. You worried him once, is that right?

A. No, we didn't worry him; we didn't worry him at all.

Q. Then why didn't you go back and present this paper to him for his signature?

A. I have told you why.

Q. You did not worry him and you didn't want to go back and worry him again; is that the way you want to leave it?

A. I will leave it the way I have testified, and if it doesn't suit you, Mr. Underwood, that is all right.

Q. You didn't even give him the opportunity to look at it and see whether you had correctly put down on paper what you say he told you?

A. No.

Q. Did you consider this statement of importance?

A. I consider the facts which he stated of substantial importance.

Q. Did you know that Thomas lived in Palm Beach or vicinity during all of this time?

A. Yes.

Q. And did you know that various people who were interested in this case went to see him from time to time?

A. I didn't know that; no, sir.

Q. You didn't know that Mr. Matteson went to see him?

A. I think I heard that later, yes.

Q. You didn't know that Mr. Dyer went to see him?

A. I probably heard it during the course of the litigation, but just when, I don't know.

Q. It never occurred to you, after the boy recovered and left the hospital, to take this to him and give him a chance to see whether it was right or wrong?

A. No; I can give you an explanation of that, if you want me to. Do you want me to tell you why?

Q. No; I am afraid of your explanations, Mr. Botts.

A. I thought you would be.

Q. Do you remember what date you received these various instruments that are in evidence here?

A. I couldn't recollect the date, but in my judgment it was not much later, if as late, as July 1st; it was just a few days after the fire.

Q. Is that your signature? (Handing witness document.)

A. Yes, that is my signature.

Q. Does that refresh your recollection as to the date?

A. Well, that statement is probably correct; it says "June 26th"; I knew it was soon after the fire, but I didn't remember the date; I expect that is right.

Q. You signed it and swore to it on that day; does that refresh your recollection?

A. I am reasonably sure this is correct, but I would not swear to it, and that is substantially in accordance with my present recollection.

Mr. Underwood:

The statement shown to the witness is in the Clerk's file and is an affidavit under oath by Mr. Botts, sworn to on

February 17, 1937, and I take it that it need not be marked.

Mr. Matteson:

That is quite all right.

Mr. Underwood:

That is all.

The Witness:

I want to ask you this, Mr. Underwood: that statement says these pieces were delivered to me on June 26, does it not?

Mr. Underwood:

I think that is right.

The Witness:

Yes; that is about in conformity with my recollection; I knew it was early after the fire.

#### Re-Direct Examination.

By Mr. Matteson:

Q. I show you this statement that Mr. Underwood was just referring to, signed by you on February 17, 1937. Does that accord with your present recollection of the facts?

A. Yes, sir; that is as I recall them.

Q. Mr. Botts, Mr. Underwood raised the question of why you didn't take this statement, Libelants' Exhibit 96, back to Johnnie Thomas for signature at a subsequent date, and he refused to ask you why not. Will you explain to us why not?

A. I don't know whether I had this statement with me or not, but I went to Palm Beach for the purpose of speaking to Thomas again. That was after I had filed one

lawsuit in this case. I went to Mr. Thomas' uncle with whom I was acquainted due to some contacts we had when I was Assistant United States Attorney, and I discussed this matter with Thomas' uncle. He asked me—

Mr. Underwood:

If your Honor please, I object to that conversation.

Mr. Matteson:

He is making an explanation of why he didn't do something that Mr. Underwood asked him about, your Honor.

Mr. Underwood:

I am not at all sure that his motive in failing to do something is a proper question at all, and I do not object to that, if your Honor please, but I do object to the witness relating the conversation—

A. All right, I won't say what was said.

Q. Go ahead.

A. I didn't go to the hospital at that time because I didn't want to do anything that would disturb Thomas—to disturb the payment of Mr. Thomas' hospital bills by some persons, and I feared that if I went there and accepted employment as Mr. Thomas' attorney that that would be disturbed. That is why.

Mr. Matteson:

That is all.

Mr. Underwood:

No further questions.

1159      Thereupon: JOHN A. THOMPSON was produced as a witness by the Libelants, and having

been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Matteson:

Q. Your full name is—

A. John A. Thompson.

Q. And your address?

A. Present address, Coconut Grove, Miami, Florida.

Q. Do you have any other address?

A. 90 John Street, New York City.

Q. What is your occupation?

A. Consulting Naval Architect, Marine Engineer and Surveyor.

Q. Mr. Thompson, will you tell us what your training and experience has been?

A. All through my life?

Q. Yes.

A. I was educated in Clytha College, Newport, England, with an extra technical tutelage at the Newport Technical School and the Stroud Technical School in Gloucestershire, England.

I served seven years' apprenticeship, unpaid, in the design and construction of ships, engines and boilers, and their repairs.

Q. Where was that?

A. About four and one-half years at Newport, and about one year at Stroud's at Gloucestershire and about one year at Thorny Cliff, Woolston Yard, South Hamilton, England.

Q. Those are Naval Shipyards that you refer to?

A. Yes.

Q. After your apprenticeship, Mr. Thompson, tell us about your experience.



A. Thereafter I went with the Fairfield Shipbuilding Company, and from there to the London office of Armstrong-Whitworth Company.

Q. What sort of company is that?

A. They are shipbuilders, prominent shipbuilders.

Q. Continue from there.

A. Oh, during the next thirty years I was with various people, finally becoming a partner in one or more shipyards, acting as manager and naval architect, and I was also a partner in a firm of consulting engineers in Liverpool and London.

Q. Will you continue from there?

A. I personally designed and built over seven hundred vessels of practically all types, except fighting tonnage, and about 95 per cent. of these would be steel vessels.

Q. Yacht types included in those?

A. Yes.

Q. Does that include yachts propelled by gasoline?

A. Yes.

Q. Continue from there.

A. Propelled by all classes of internal combustion engines, and also by steam.

Q. During the war what was your experience?

A. During the war I was chief designer of the British Admiralty on gasoline vessels. After the Titanic disaster, when the Home Office opened a panel of Naval Architects, I was appointed naval architect assessor to the British Board of Trade.

Q. Did you remain in England?

A. In 1923, due to the depression in shipbuilding in England, I went to Australia; I was in Sydney, Australia, as a consultant naval architect and engineer for about six years, I think. In 1932 I came to this country and commenced on my own account as an independent surveyor, and I have continued more or less since acting in that capacity.

Q. What has been the nature of your work as independent surveyor?

A. In this country?

Q. Yes.

A. Mostly engaged in the survey of yachts.

Q. In the period in which you have been engaged in this country, how many yachts have you examined?

A. In this country?

Q. Yes.

A. On an average of 200 to 250 a year.

Q. What types of yachts are included in that?

A. I would say yachts of almost all types, from the smallest to the largest.

Q. Have you had any opportunity to observe the Yacht Seminole since the fire of June 4, 1935?

A. I went to a yard about a year ago; I think it was called Nuta's Yard; it was under another name previously. The Yard lies up the Miami River, and I was pointed out—there was pointed out to me a wreck which was said to be the wreck of the Yacht Seminole.

Q. Did you look at the wreck at that time?

A. I got a boat from the yard there and rode over to her and climbed on board and got around on her as well as I could. At that time she was partly submerged. Water in the engineroom was coming out of her, as far as I can recall now, probably two or three feet or more above the engineroom floor.

Q. Since that time have you examined the wreck on any other occasion?

A. On a day in December last I examined the same wreck at the same place, and at that time she had been more or less pumped out.

Q. On the occasions of these examinations did you observe the gasoline tanks of the Yacht Seminole, and I mean by that the tanks which are shown in this picture?

The Court:

We will recess until 1:30.

(Thereupon a recess was taken until 1:30 P.M., March 23, 1939—same day.)

March 23, 1939, 1:30 P. M.

Convened pursuant to recess.

Appearances same as heretofore noted.

1163 Thereupon JOHN A. THOMPSON, a witness produced by the Libelants, resumed the stand and testified further as follows:

Direct Examination (Cont'd.)

By Mr. Matteson:

Q. Mr. Thompson, I neglected to ask you this morning if you are a member of any professional societies?

A. I am a member of the Society of Marine Engineers of New York; a member of the Institute of Mechanical Engineers of New York. Prior to coming here I was also a member of the Institute of Naval Architects and the Institute of Marine Engineers, but I resigned them when I came to America.

Q. I was asking you, Mr. Thompson, when we recessed this morning as to your observation with respect to the gasoline tanks of the Yacht Seminole, and I refer to the large cylindrical tanks which are shown in Libelants' Exhibit 6.

A. Yes.

Q. Did you observe those tanks with reference to their construction?

A. As far as I was able to.

Q. Will you please tell us the extent of your investigation and what your observations were with respect to them?

A. Are you referring to my first observations or the second ones?

Q. Tell us all about it, and when you saw them.

A. When I first saw the tanks it was about a year ago, when I went up to Nuta's Yard at that time; at that time the water was up and I could not see the bottom of the tanks. I observed that the tanks were not in line; one of them, I think it was the second one from the port side, was badly displaced and leaning forward.

Q. Will you continue and tell us what other observations you made?

A. At that time I had difficulty in getting on the boat. It was at that time that I measured the distance, the diameter of the tanks, with a lath, and with the same lath I measured the distance from the corners, that is the longitudinal sections and the sides. I did not note the diameter of the tanks. I consider them to be four feet in diameter, I would say. I measured the difference in the length and the sides and the diameter of the tanks, and the difference was approximately one and one-half inches, which would indicate that there would be approximately a maximum of three-quarters of an inch from the forward side of the tank to the forward bulkhead, and from the off-setting side of the tanks to the after bulkhead.

Q. Now, Mr. Thompson, with respect to the tanks, tell us first what did you observe on that occasion or the subsequent occasion with respect to the construction of the tanks.

A. On the first occasion I didn't take particular attention to the construction of the tanks, but on the second occasion, I believe in last December, I had the opportunity to examine the tanks more closely, and I consider they had not been built as gasoline tanks.

Q. Will you just describe the tanks and tell us why you reached that conclusion?

A. They were cylindrical steel or iron tanks, with an inverted bottom, single riveted.

From my experience in the construction of such tanks I should say that the lower seam, that is, the row of rivets connecting the bottom of the tank to the sides of the tank,—the holes had been punched in and had not been drilled. The seam was a single riveted seam, which I do not think is suitable for the lower seam of a gasoline tank.

Q. Was the seam welded?

A. The seams had not been welded, neither had the rivet points been welded.

Q. What openings did you note in the tanks?

A. I noted an opening towards the bottom of the tank, and one just about the top, both on the after side; and on the top of the tank a small hole in the center at the top.

Q. Was there anything in the nature of a manhole or manhole covering plate laying on any of the tanks?

A. I looked for such a thing, as far as my examination would allow me, but I could not find a manhole covering either tank, or in any of the tanks.

Q. You expressed the opinion that this sort of tank was not made for a gasoline tank. Will you tell us your reasons why you think it is not suitable for us as a gasoline tank?

A. Would you mind splitting up your question?

Mr. Matteson:

Read the question.

(Thereupon the preceding question was read by the Reporter as above recorded.)



A. May I answer that part?

Q. Yes.

A. A gasoline tank anything of the like and size of those tanks must have means of internal examination. On that one point alone I would not consider these tanks gasoline tanks. From my observation I do not consider them gasoline tanks, insofar as they were riveted tanks without welding of the seams or the rivet points.

Q. Why do you say that?

A. Because from my knowledge and experience of good standard practice all gasoline tanks should have those two essentials; furthermore, I do not consider a tank of that size suitable for gasoline with a single riveted lower joint, or a joint that has not been drilled and fitted rivets used.

Q. Why is that?

A. As far as the riveting of the tank is concerned, sir, it is practically impossible to fit an inverted end or any end to a punched place.

Q. Why is that objectionable, Mr. Thompson?

A. The effect of that poor construction would in my opinion—it would have a certain effect on the inability of getting that joint absolutely gas-tight. You would likely have damaged rivets, rivets that would be forced in by the riveter with heat; they would be forced in through elongated and not thoroughly cleared holes, and you would then not get a perfectly fitted head of the rivet and you would likely damage the bottom of the rivet in so inserting it.

Q. Why is that important in connection with a gas line?

A. Because seepage from a gasoline tank is more likely to happen than from water or similar liquids.

Q. Why is that?

A. We find it always much more difficult to retain gasoline in a riveted tank, and the practice has been as

far as I can remember, as an additional precaution, that gasoline tanks be lightly welded at its collar and all rivet points.

Q. I would like to say a little something on that further, if you like, on the rivets.

Q. All right.

A. The difficulty set up by riveting a tank in that way is that you have two positions that will leak, the back and the head of the rivet, as well as the point.

Q. I do not know that I understand you exactly. Will you explain that?

A. Well, in the dome end of the tank the head of the rivet is inside of the tank. With the inverted tank the head of the rivet is outside of the tank.

Q. Giving you two exterior surfaces, is that right?

A. Exterior?

Q. Yes.

A. Yes. I do not object to it on the inverted end. It is at the top of the tank and not the bottom—

Q. What is the objection to having it at the bottom of the tank?

A. There is more than one objection.

Q. Will you explain those to us?

A. One serious objection is that whatever condensation happens in your tanks, it will attack the bottom end, whereas the condensation will not attack the top end if inverted at the top.

Q. Why is the condensation more apt to attack it when you have inverted crown than otherwise?

A. Because, sir, the condensation runs down the inside of the tank, and it eventually reaches what I would call the shell side of the inverted end; it would get in between the shell plating and the inverted end of that small space, and it is impossible to push it up unless you have means of getting inside, after the tank is riveted.

Q. Can you draw us a little illustration on that page and show us the point at which you say the condensation will collect?

A. Yes, certainly. I will exaggerate the thickness just for the purpose of illustration, your Honor. I do not mean that the tanks are of this thickness. This (indicating) is the side plating of the tank, the cylindrical portion of the tank. I will mark that "side", shall I?

Q. All right.

A. (Witness so indicates.) This is the bottom of the cylindrical shell. Shall I mark that "bottom"?

Q. Yes.

A. The rivet holes that I was referring to, which I considered were punched and not drilled, I will mark across here (indicating) in black. These holes were afterwards counter-sunk, which is not good practice,—they were countersunk the full length of the plate, therefore, the holes had a larger diameter, your Honor, outside than inside. I will just etch in here (indicating) the section of the material which is adjacent to the drilled and countersunk hole. This (indicating) represents the bottom or, as I described it, the inverted end, but of course that is much heavier than these tanks were. I do that purely and simply to make you understand, your Honor. I don't know whether these rivets were small neck rivets or not, or if they were plain necks. I see nothing on here now to show that, but I will assume that they were plain necks. I will etch that on a different angle to show the section of the material left in the bottom adjacent to the drilled hole or possibly punched hole. Now, Mr. Matteson, what was your question?

Q. I asked you to illustrate the point at which you said the condensation would collect.

A. It would collect here (indicating).

Q. Will you draw an arrow pointing to that point?

A. It would collect and seep all down here until it met the inside edge of the caulking.

Q. Will you show us what the inside edge of the caulking will be like?

A. May I stop and say what caulking means in an iron tank. It doesn't mean putting in any material like wooden caulking. Here is the lower end of the tank shell, here is the lower end of the inverted end. Shall I mark these "X" and "Y"?

Q. Yes.

A. (Witness so indicates.) Is that clear, your Honor? An iron tool is taken, a suitably shaped tool—different yards use different types—but it is a plain hand chisel; the easier description is plain hand chisel. They run that along the inside edge of the outer plate and force a certain amount of that steel material or iron up to fill that space until it is definitely tight. When the caulking is off you can observe that edge on the plate, because it is slightly higher up than this (indicating); this (indicating) is the caulking. The seepage or condensation would eventually attack not only the inside edge of the caulking but also the top of the rivet as it passes the rivet.

Q. You have drawn a line here indicating where the seepage comes?

A. The condensation, sir. I refer to it as "condensation".

Q. Will you place the letter "A" at the top of that line?

A. I will mark an arrow showing its direction. I will mark that "A".

Q. Now, Mr. Thompson, on the second figure to the right of the first one, will you also show a similar arrow, also mark that "A"?

A. Yes; showing the inside of the caulking.

Q. That is right.

A. Where the seepage or condensation would strike?

Q. Yes.

A. I will mark this in black.

Q. These two diagrams that you have on this sheet (indicating), Mr. Thompson, do they illustrate the manner of construction of the tanks on the Seminole as you observed them?

A. Approximately. I don't know whether a small neck rivet was used or a plain head rivet.

Q. Does that make any difference in the answers that you are giving to us?

A. No, not materially; nothing that would help the Court.

Q. Would it make any difference at all in the facts which you have been describing to us?

A. No, sir.

Mr. Matteson:

I offer this diagram in evidence.

Mr. Underwood:

No objection.

The Court:

Let it be admitted.

(Thereupon the diagram above referred to was marked Libelants' Exhibit 99.)

(By Mr. Matteson):

Q. You were speaking of the use of a reamer or drift in riveting such a tank. Will you tell us what that is?

A. May I make another sketch, your Honor, because it is difficult to describe it in language?

The Court:

Direct your questions to counsel.



(By Mr. Matteson):

Q. I do not want to go into great detail on that, Mr. Thompson. Can you tell us just generally what a reamer is or what a drift is?

A. A reamer or drift is something that is used when the holes are not absolutely opposite one another.

Q. That is, Mr. Thompson, at the time the tank is being riveted?

A. Yes. If they are badly out of place of course the plate should be condemned, but if the hole overlaps slightly, then you can pass or fit a bolt right through, and you put the reamer in the hole to get out the overlapping material; by using it you make an unelongated hole, to the extent that one plate is overlapping—

Q. A reamer is a little power tool to make a hole as round as it is possible to make it round?

A. Yes.

Q. Do I understand that if a reamer is used the holes then become not so well-fitting?

A. Not so good a job as a properly fitted drilled hole.

Q. I believe you said that in the construction of a tank of this kind the rivet holes should be drilled in place?

A. Yes.

Q. How could you tell from an examination of this tank which method had been used in its construction?

A. When I saw the tank on the second occasion when I visited the wreck, I looked at the seams and the rivets were not all in the same line; they were slightly out of line, referring to the punching and not the riveting. I think I could show you that on the photograph, if you wish.

Q. I want to ask you this: taking tanks constructed as these were, according to your observations and as you have described them here, used for the purpose of storage of gasoline on a vessel driven by gasoline power for

fourteen years, without being moved from the place of their original installation, in your opinion would such tanks in use for such a period remain tight for that period of time?

A. They certainly couldn't remain tight.

Q. Is that for the reasons that you have described and illustrated to us?

A. Those that I described and illustrated.

Q. Now I think you have told us that you observed the compartment in which these tanks were installed, and that you found that fore and aft there was only a space extending the width of the tanks by about an inch and a half, did you say?

A. I judge, sir, from the measurements that I took, that there was a space of three-quarters of an inch on the forward end.

Q. Did you observe how much space there was in that compartment for the tanks athwartships?

A. I consider it was three or four inches or thereabouts.

Q. How were these tanks installed in the compartment with respect to height; what were they supported by?

A. At the time I saw the tanks?

Q. Yes, and how were they supported?

A. They were supported on what I thought had been the bottom of a cross bunker, or coal bunker, and the supports, I believe, consisted of longitudinal angles and some foundation plates, as far as I remember now.

Q. As they were installed how were the tops of the tanks with respect to the top of the compartment?

A. I am afraid I didn't quite follow your question. I am sorry.

Q. Well, you observed the compartment in which the tanks were, did you?

A. Yes.

Q. Did you observe the height of the sides of the compartment?

A. Yes.

Q. Did you observe how the tops of the tanks were as they were installed with respect to the top of the compartment?

A. From my observation, sir, the tanks came to practically the top of the compartment.

Q. As those tanks were installed in that compartment would it be possible to inspect them in place?

A. It is impossible, in my opinion, to examine them there externally or internally in any way.

Q. As they were installed in the Seminole?

A. As they had been installed.

Q. Will you tell us, Mr. Thompson, in your opinion, in the light of your experience, whether that is a proper method for installation of gasoline tanks in a vessel?

A. I consider it most proper?

Q. Why?

A. You are referring now to the installation of the tanks?

Q. Yes, sir.

A. I think it is absolutely imperative to have them so—for the whole of my career it has to my knowledge been considered good practice all of the time that with riveted tanks or any construction there should be sufficient space all around; I mean at the sides on top and the bottom, to enable a complete external examination and for dealing with the tanks should repairs be found necessary.

Q. Why is that important?

A. In respect to gasoline tanks?

Q. Yes.

A. In the absence of those facilities I would consider those tanks—I would consider the installation of those tanks a dangerous hazard from the moment they were installed and increasingly dangerous as the years went by.

Q. Is that the reason that you say it is important that they should be so installed that they could be inspected in place?

A. Not only important but imperative.

Q. You were speaking of facilities for interior inspection of tanks of this type. Will you tell us what in your opinion is required in that respect and why?

A. It is absolutely essential that means should be provided for easy access of a man to get inside the tank to examine the rivets, the rivet heads, and test them, and examine the seams and the condition of the plating.

Q. Why is that important in a tank of this description?

A. Well, in a test it is important to find out whether the head of a rivet has cracked or broken off and to see if the rivet is a sound rivet. That is an important and vital consideration.

Q. How could such access be provided?

A. By the use of an accessible manhole with proper cover.

Q. You say that is usual in a tank of this size?

A. I have never come across a gasoline tank of that capacity or anything like that capacity without that provision.

Q. Did you observe whether or not there were any means provided on the Seminole for securing these tanks in place?

A. I saw none, and from my observation of the bulkhead I do not consider that these tanks ever were secured by straps.

Q. What are straps?

A. Straps?

Q. Yes.

A. They are made of iron or steel and go around the tank and secured at some firm part of the vessel structure, the purpose being to hold those tanks in position in relation to the bulkheads or any other part they are attached to.

Q. How would these straps be secured to any bulkhead or other object?

A. Preferably by straps, if the bulkhead was a riveted bulkhead, or by bolts otherwise.

Q. Was there any indication on the bulkhead that any such contrivance had ever been affixed to these tanks?

A. I found none.

Q. If there had been any there you would have observed them?

A. Yes, I would have observed them, because I looked for such things.

Q. What would be the effect of the failure to have such straps or other supports to be on the installation?

A. Any boat or the Seminole particularly?

Q. The Seminole particularly.

A. Well, the Seminole was of a type where one would experience vibration. She has a greater depth to length proportion; I think it is approximately sixteen to one; I believe that is correct. In addition to that, sir, she has very few cross-beams; she has a much flatter bottom, from what I could observe of the wreck, and I think a vessel of that type, under those conditions, would be subject to regular and permanent vibration. I am afraid that is not a complete answer to your question.

Q. Before we go further, Mr. Thompson, let me clear up two things; you spoke of a depth to length proportion.

A. Yes.

Q. And you said it was sixteen to one?

A. Approximately 16 to 1.

Q. Do you mean radius 1 and a depth—

A. Sixteen depth to one length.

Q. Do you mean sixteen lengths to one depth?

A. No, no, no; that would be an extraordinary vessel, Mr. Matteson. I mean sixteen depths to one length.

Q. By "depth" what do you mean?

A. Depth of the vessel. I understood that it was seven feet. I took that from some paper I saw which gave the



depth as seven feet and the length merely sixteen times that. I don't remember the exact length. I know the depth was seven feet and I remember it was calculated at sixteen to one.

Q. In other words, she was sixteen times as long as she was deep.

A. That's it.

Q. When you say she would be subject to vibration, just what do you mean?

A. Well, the longer or greater the proportion of depth to length, as we call it in naval architecture, the more likely a boat is to vibrate.

Q. What does vibration mean?

A. It would be a combination of longitudinal stressing and racking.

Q. You mean working in the hull?

A. Yes, slightly working in the hull.

Q. If the tanks were not screwed and placed properly what would be the effect of that vibration on the installation?

A. I think it would set up stress on joints and pipes. That would be one factor. I do not mean to say that there was anything wrong, but I am just telling you the effect on that type of boat on joints and pipes. You would more likely get vibration on a boat of that character than you would with a boat with less depth to length.

Q. I take it that your view is that securing the tanks is highly important in that type of vessel?

A. Very much.

Q. I show you this exhibit No. 2. It has been testified that the valve attached to this exhibit was the shut-off valve that was affixed to the No. 2 tank, and that the remaining parts are pipe connections connecting that valve and tank for the conveyance of gasoline to the place where it was needed for use in the engineroom, I

would like to ask you whether in your opinion that sort of an arrangement of piping for that purpose would be proper in a gasoline vessel?

A. Is my answer to be directed to the whole thing?

Q. To the whole thing.

A. I think I can answer it briefly, Mr. Matteson, that if I saw such an arrangement I would immediately condemn it.

Q. Why?

A. Far too many joints in such a short length.

Q. Why is that of any importance?

A. The pipe is much more likely to leak; anyone looking at the pipe can see a leak but you rarely can see seepage.

Q. Will you describe to us what you mean by "seepage" in the case of gasoline?

A. I call seepage a minute leaking with the fluid spreading along the surfaces, but not falling from the surfaces.

Q. In the case of a gas line what would be the result of that kind of a leak?

A. An accumulation of gasoline vapor adjacent to where the seepage would come or possibly come.

Q. Do I understand from you that in that type of leak the gasoline evaporates before it drops, is that what you mean?

A. There would be no dropping; it would be evaporation, or rather the turning into gasoline vapor, turning gasoline into gasoline vapor, and such a leak, as I understand your testimony, would not be indicated by any dripping of—

Mr. Underwood:

May we let the witness do the testifying?

Mr. Matteson:

I will withdraw it, if there is the slightest objection to it.

Mr. Underwood:

I certainly do object to it.

The Court:

Proceed.

Q. When gasoline evaporates in the air space, Mr. Thompson, will you tell us what happens; tell us what happens when gasoline evaporates and fumes are created; what happens to the fumes?

A. Well, generally they are heavier than air and they mostly assume a lower position.

Q. And in a vessel where is that?

A. In a vessel of the type of the Seminole?

Q. Yes; where is the point at which such fumes are apt to collect?

A. In the bilges.

Q. I show you this Exhibit No. 17. There has also been testimony with respect to this, that is, being a part of the gasoline piping system of the Seminole. I will ask you whether in your opinion that set-up of pipe would be a proper thing to have in the gasoline lines of a gasoline vessel. I am referring to the whole thing.

A. Speaking as a whole, I would not approve of it.

Q. Why not?

A. Too many joints. I think this pipe is brass. A short length of brass I have no objection to, provided the joints are all soldered, provided the screw joints are all soldered.

Q. I call your attention to the globular—I suppose you would call it—part of this device which has been referred to as a trap. On the bottom there is an opening. Do you see the threaded part broken off in that opening?

- A. Did you say "threaded" part?
- Q. Or whatever it is that is broken off in there.
- A. Do you wish to assume that this is threaded—
- Q. No. I don't want you to assume anything.
- A. I should say it was threaded.
- Q. Can you tell us what the proper method of closing the bottom of a trap of this type would be?
- A. During the whole of my experience traps of that description, or anything of that nature having a drain at the bottom, should have a ground plug fitted with petcocks or plugs at the bottom.
- Q. Can you tell me whether or not the fitting which has broken off in the bottom of this trap is a part of such a plug?
- A. I have not examined it before, Mr. Matteson, and that is why I am taking a little longer time. I haven't picked it up and examined it, but I have seen it. I have seen it on the desk and other places. I don't think that is a part of a plug.
- Q. Why do you say that?
- A. Because I cannot imagine anyone making a plug with a drilled center as it must have had for this—as it must have had if this is a part of a plug.
- Q. Well, Mr. Thompson, in your opinion can you determine what sort of a connection was on there, if it wasn't a plug?
- A. May I go back and emphasize my views. I could not pass this for—in other words, anything of that nature should have a stop-cock, an approved stop-cock on each side, so that both ends can be shut off before the plug is taken out for the cap lifted, before it is removed from the line or the plug taken off.
- Q. Why is that?
- A. I think it would be extremely hazardous to have such a fitting on a pipe line without such shut-offs.
- Q. Why is it important to have such shut-offs?

A. To prevent leakage in the bilges.

Q. When would such leakage occur?

A. With the removal of the plug.

Q. What would leak if removed?

A. If removed the sediment and water, I presume; sediment and/or water if present.

Q. Why do you say that these should have a plug and not a threaded connection of some kind on the bottom, on the bottom of these traps?

A. For more reasons than one. One reason is that a plug will make a much tighter joint for any type of valve; secondly, that plug could not be removed by accident or by a careless person fooling with it, and it could not be opened by vibration. In other words, I think that plug would remain tight until it was deliberately opened by the means of a wrench.

Q. Why are these reasons that you have just given us important with respect to a gasoline line?

A. To prevent leakage of gas into places where you might not be able to get the fumes out and afterwards it would make a dangerous hazard.

Q. Assuming that the gasoline piping system of the Yacht Seminole consisted of pieces of pipe of the type of these two exhibits, two and seventeen (Nos. 2 and 17), would you consider that it was proper?

A. Do you mean in part or are you asking me about the whole system?

Q. I am suggesting that these are typical of the entire system; what would you say as to that?

A. I couldn't imagine such a system ever existing in any boat.

Q. If it did exist would such a system be dangerous?

A. Extremely dangerous.

Q. Why?

A. Because of the certainty of the collection of gasoline vapor in the bilges, from seepage, even if not from definite leakage.



Q. I show you Libelants' Exhibit No. 19 in which some pipe lines appear in this part of the photograph, from which you will note a line has been drawn at the end, and at the end of the line is written the words "carburetor line". Can you observe the condition that is illustrated there?

A. In a limited way, yes.

Q. I want to ask you, Mr. Thompson, assuming that a line, the carburetor line by which gasoline is taken to the carburetor of a vessel, is a line such as illustrated in this picture,—would you consider that such a line was a proper line?

A. I would have disapproved of it myself.

Q. Why?

A. From my experience.

Q. Why?

A. Too many joints and the bends are too sharp and no expansion bends on this pipe at all. I wouldn't approve of any such system; I can only judge, however, from the photograph.

Q. I show you Libelants' Exhibit 20 in which a similar line is shown, with an arrow drawn from it marked "feed line, port engine"; do you see that line?

A. I would rather not pass an opinion on that; it is not clear enough for me to pass an opinion on that.

Q. Now would you consider a system such as shown by this Exhibit 19, which you did testify with respect to, dangerous?

A. I would.

Q. Why?

A. May I look at the photograph while I answer?

Q. Yes.

A. May I see the photograph while I answer the question?

Q. (Hands exhibit to witness.)

A. I thought I answered that before.

Q. Answer it again, please, even if you did.

A. No expansion bends.

Q. Mr. Thompson, the question I asked you was: would a system such as that shown there be dangerous?

A. Highly dangerous in my opinion.

Q. And why?

A. The danger of seepage resulting in the collection of gasoline vapor in the engine-room bilges.

Q. Seepage from where?

A. From these joints; from these sharp bends; vibration getting in on these pipes. These things would set up corrosion fatigue at the bottom of the threads; you would be apt to get cracked threads. I said "corrosion fatigue" and not "fatigue".

Q. Is the corrosion fatigue the only thing that would cause a leak?

A. No. I think the joints would apt to become loose on any gas pipe.

Q. What would cause that?

A. Vibration from the engines or any stress acting on that pipe.

Q. Now, Mr. Thompson, the testimony is that in the engineroom of the Seminole there was a line and a valve for drawing off gasoline in the engineroom. Now I show you this little diagram that was drawn by Mr. Underwood. The circles represent tanks; the line in front of the circles represent the bulkhead; and this is a line (indicating) passing through the bulkhead from each of the tanks, with a valve on it, and the line connecting the valves on the four tanks?

A. That is all very clear.

Q. And at the starboard end of the line connecting the tank valves, the connection that comes around in front there at a point in front of the No. 2 tank, at the end of which was affixed a draw-off valve, or valves from which gasoline might be drawn. Would that in

your opinion be a proper thing to have in the engine-room of a gasoline vessel such as the Seminole?

A. No, sir; it is improper.

Q. Will you explain to us why?

A. From my experience and from what I know of good standard practice during the last thirty years a draw-off of that description would not be permitted and should not be permitted.

Q. Why should it not be permitted?

A. It creates a very dangerous hazard.

Q. Will you tell us what that hazard is?

A. Seepage or leakage of gasoline into the spaces below; the danger of using that to draw off gas in a vessel would cause gasoline vapor in the vessel to raise and blow over into the spaces below; the danger of someone tampering with it or the negligent use of it, or any use of it; the danger of the valve spindles being bent when the valves are open, precluding the possibility of shutting off the stream of gasoline through your pipe into the bilges; any of these would create very dangerous hazards, and any expert surveyor or experienced surveyor would condemn the use of any draw-off of any description in any engine room, whether the engine room was open or closed.

Mr. Underwood:

I move to strike out what any experienced surveyor would do.

The Court:

The motion is granted.

(By Mr. Matteson):

Q. Without saying what any experienced surveyor would do, will you tell us what good standard practice would require on this point?

A. The omission of any drain of any description whatsoever.

Q. Are there any other ways that you think of in which one of these valves could get out of order other than the bending of the spindle that you spoke of?

A. Oh, yes; there would be several. You might get some grit which would prevent the closing of the valve, and not permit the valve to be properly seated on the seat, and have the valve remain open to that extent, or the valve might get worn by the use of such an improper thing, and the valve might be—it would be impossible to keep it gas-tight, not only that valve but any valve of any type whatsoever.

Q. I show you a valve which is a part of Exhibit No. 11, the valve containing the number 125 on it. I will ask you to examine that and tell us what you observe.

A. I haven't examined these valves before. Are you referring to the valve or the valve spindle, or the spindle itself?

Q. Tell us what you know.

A. Shall I refer to the whole valve, the spindle, or do you want me to separate it?

Q. Examine the other part of the valve.

A. Taking the whole valve, it is a nickle-plated valve built by good makers of valves, with a working pressure of 125 pounds steam.

Q. I didn't ask you particularly about its condition; I am asking you particularly—

A. You mean today?

Q. Yes, as you observe it there.

A. Today it is a valve in such a condition that I would condemn it.

Q. Why do you say that?

A. The valve itself is damaged and it is worn badly.

Q. Show us the part that you say is worn.

A. The valve itself.

Q. Do you mean the part you have in your hand?

A. No.

Q. Point out to us where the evidence of wear is on that valve.

A. All over, as far as I can see; it is badly worn all over; I would call that valve worn all over; it is more badly worn on one side than the other. In this light it is extremely difficult to state definitely just where that valve is worn; it is generally worn, but it is not worn evenly. There is a nick in it; I think I kind of see a nick; it looks as if there was a nick there, and this (pointing) is a different nick. I would call that a broken valve; as far as I am concerned that valve is finished with and I wouldn't attempt to repair it.

Q. A valve in this condition that you have described, in your opinion would that be a proper valve for confining gasoline?

A. It is not a valve any longer for any use.

Q. Would it be satisfactory for confining gasoline?

A. No. Suppose you look at the seat in it; the seat seems pitted, and I imagine it would be after so many years. I cannot see it very clearly, but that valve is no longer a valve in its present state.

Q. You speak of two conditions on this valve, first the worn condition and the other the nick.

A. Yes.

Q. Would in your opinion irrespective of the nick, the wear apparent on that valve affect its efficiency?

A. Most decidedly.

Mr. Matteson:

I would like to have marked as an exhibit this diagram that was referred to in the testimony of the witness, and I offer it in evidence.

The Court:

Let it be admitted.



(Diagram above referred to was marked Libelants' Exhibit 100.)

(By Mr. Matteson):

Q. There is testimony in this case that there was installed in the gasoline line of the Seminole a round glass gauge, running from the head of the line adjoining the valves at the lower part of the tanks to up near the height of the tanks themselves. In your opinion would it be proper to have a round glass gauge of any kind as an indicating device to determine the level of gasoline in tanks in an engineroom?

A. Most improper.

Q. Why is that?

A. During the whole of my thirty years or more of experience with gasoline tanks it has been considered good practice not to fit any device that can be broken; the only device that I have approved of in thirty years of my experience is a sounding pipe. I consider glass gauges of any description and whatever manner installed, of whatever form or shape, dangerous.

Q. You speak of breakage; is there any other reason than breakage connected with your opinion?

A. I think it would represent another definite cause of leakage and/or seepage of gasoline from the tank, which would become gasoline vapor which would sink to the lower level.

Q. Mr. Thompson, you observed what was left of the engine-room on the Seminole, I believe, did you not—the space?

A. What?

Q. You observed what was left of the engineroom of the Seminole—the space, I believe?

A. Yes.

Mr. Matteson:

May I see your blueprint, Mr. Underwood?

Mr. Underwood:

Certainly.

(Recess.)

Q. I show you this blueprint which has been marked Respondents' Exhibit "A" for Identification on which the outline of the engineroom and the tank space of the Seminole is indicated. Have you in mind the size and shape and other features of that engineroom as indicated by this blueprint?

A. Yes, I think so.

Q. Mr. Thompson, there is testimony here that this engineroom was ventilated by a skylight no larger than 29 by 43 inches, a window on each side, one on the port side leading out through the side of the vessel and one on the starboard side leading into the passageway which goes by the engineroom. The window on the starboard being approximately 24 by 36 inches, the longer diameter being vertical, and the top of the window being only a few inches from the deck above; that there is also a hatch in the deck above the engineroom at the end of the engineroom, toward the stern, 24 by 24 inches; that there are two 14 inch cowl ventilators, one on each side of the skylight extending up to the deck above, but not extending below the deck of the engineroom more than a few inches. I would like you to tell us whether in your opinion, Mr. Thompson, that is sufficient ventilation for an engineroom of that size on a vessel of the type of the Seminole propelled by gasoline power.

A. Under what conditions?

Q. I am speaking now generally, under conditions of operation.

A. I would not consider that sufficient.

Q. Why not?

A. Because you have not indicated that any air is carried down to the engineroom floor or below it.

Q. Why do you say that?

A. Because it is good standard practice and has been during the whole of my experience in boats having any type of explosive mixture in the engineroom to carry fresh air down to as near as possible the lowest part of the compartment in which that fluid is.

Q. Do I understand that in your opinion the ventilating device which I have described did not adequately do that?

A. It would not.

Q. I would like for you to assume further, Mr. Thompson, that this vessel, as I have described it, is laid up afloat in a large storage shed, the ends of which are open; that the openings in the engineroom, including the skylight, the hatch and the windows are closed, and only the ventilators remaining open; that the vessel is left in that condition for a period of two months or more. Would you consider that under such circumstances the vessel was properly ventilated?

A. I would not.

Q. What in your opinion would be the danger involved in not having greater ventilation?

A. The accumulation of an explosive mixture in the lower section of that engineroom would create a very dangerous hazard in any part of that engineroom, particularly in the lower part.

Q. Would it make any difference in your opinion, Mr. Thompson, if at the time the vessel were laid up it had no noticeable leaks in the gasoline system?

A. No.

Q. Why not?

A. Because I think it is extremely difficult for anyone, even though they are experts, to go through an engineroom and spend quite a lot of time there, and definitely say that there is no seepage in that engineroom, even if they could not smell it and examine it

most carefully,—I don't think that that would guarantee that that engineroom was free of gas at the time of the lay-up, but with an extended lay-up the danger is definitely increased because slow seepages would result in the collection of an explosive mixture, particularly in the lower part of that space because of the inert state of the air and the, I might say, entire lack of ventilation.

Q. Would it make any difference in your answer, Mr. Thompson, whether or not there was a substantial quantity of gasoline in the tanks?

A. My answer would still be "no", but it would be increasingly dangerous if any gasoline or other or similar fluid was in storage in that space during that storage period; it would increase the hazard tremendously and the likelihood, of course, of seepage.

Q. Did you note the point at which the draw-off valves were attached to the gasoline tanks of the Seminole?

A. On my second inspection I did.

Q. And where were the draw-off valves affixed to the tanks?

A. On the engineroom side approximately, I would say, the lower part of the orifice would probably be five and a half or six inches from the lower end of the tank.

Q. And with the orifices located in that position would or would not it be possible to draw of all of the gasoline in the tanks?

A. By the use of these valves?

Q. Yes.

A. Oh, no, you couldn't draw it off.

Q. Did you observe whether or not there was any other means provided to remove the gasoline from the tanks on the Seminole?

A. I did not; no, sir. Since you have mentioned that, sir, that is another objection I have to the convex in-

verted bottom. If the bottom had been concave it would have been possible to drain the tanks by fitting a proper ground plug, as we do permit in some circumstances. It would have been impossible to fit these tanks with any drain in my opinion, which would adequately empty these tanks of liquid gasoline.

Q. Now, Mr. Thompson, in connection with the lay-up of a vessel of the type of the Seminole, as I have described it here, will you tell us what in your opinion, if she were going to be laid up for a period of two months, good practice and precautions would require?

A. Do you mean with respect safety?

Q. With respect to the engineroom and safety.

A. And not the upkeep of the property on her?

Q. That is right.

A. First and foremost the complete removal of all liquid gasoline and all other dangerous liquids; the cutting off of any live wiring, that is, electric wiring in the ship.

Q. What do you mean by "cutting off"?

A. Disconnecting the batteries, and the switchboard in particular.

Q. Why do you think that is a precaution that you should take?

A. For two reasons: one is that they are live wires; secondly, it prevents the negligent operation of a switch by anyone going on board who was not thoroughly aware of the danger, or for any other reason in connection with the operation of a switch. I believe it should be made impossible to get a spark from any electric point at all during a lay-up of a ship of that character. The practice to my knowledge in England, Australia and the eastern coast of America—by "eastern coast" I mean from Miami right up to New Bedford—has been almost uniformly the removal of the batteries. They are removed for two reasons; one for safety purposes of the ship,



and the other reason is for upkeep of the batteries. I am referring now to the safety purposes, the removal of live wires and the prevention of the negligent operation of switches or other electrical connections.

Q. Mr. Thompson, I want to put this question to you: assuming that the batteries are not cut off and that electricity is available at the switchboard of a vessel of the type of the Seminole in her engine room, and that the vessel has been laid up for sometime, with her engine room closed up except for the ventilators which I have described, and assuming that one goes on board the Seminole and goes into the engine room, would you or would you not say that it was prudent in those circumstances to attempt to manipulate switches on the switchboard without first airing out the engine room compartment?

The Court:

Read that question, Mr. Colman.

Thereupon the preceding question was read by the reporter as above recorded.

The Court:

Mr. Matteson, you say "laid up for sometime" in that question.

Mr. Matteson:

I will amend the question and say "Laid up for two months".

Mr. Underwood:

I object to that; that calls for a conclusion which the Court may have to probably reach at the end of the lawsuit.

The Court:

Mr. Matteson, inadvertently I may have caused you to amend your question there. I am questioning in my own mind as to whether the facts that you assume should not be brought home to the person who had the instrument there or who operated it.

Mr. Matteson:

Of course, I take it, your Honor, that the ultimate application of the witness' opinion, whether it fits the facts in this case, will be for the Court to determine, but it seems to me that it is competent for the witness to express the opinion and have the Court make the application on the facts before him.

The Court:

I am questioning whether or not the respondent in this case could be held for the negligence of Abel without Abel being charged with the notice of these facts which you assume.

Mr. Matteson:

If your Honor please, what I have assumed are facts, as we understand them, from the facts so far developed, but the point is as to whether or not Abel was legally justified, under the circumstances, in doing what he did.

The Court:

But ultimately you ask him the question was Abel guilty of negligence in throwing the switch under these assumed facts. Now that question does not assume that any of these assumptions were known to him.

Mr. Matteson:

As far as that is concerned, if your Honor please, I don't think it will ever be possible for any one to know what was in Abel's mind at that time.

The Court:

If I am right about that, then your question is improper.

Mr. Matteson:

I think it is proper for us to base it on what we can reasonably assume, that is, that Abel did have these things in mind. Perhaps it would be better to amend the question and not make the time so specific. The point that I have in mind is that it was simply a lay-up, and certainly for a number of weeks at least that is.

The Court:

I think I shall sustain the objection to the question as framed. Suppose you reframe your question.

(By Mr. Matteson):

Q. Mr. Thompson, let's put it this way: assuming a boat of the type of the Seminole, of the characteristics and dimensions that I have described to you, assuming that the engineroom of this vessel has been closed up, the skylight closed, the hatch closed, the windows closed, only the ventilators remaining open, cowl ventilators, from the deck above; that the vessel is in storage, and that someone goes aboard, and it is not apparent how long the vessel has been laid up there, except that she has been laid up there for sometime, and that a musty odor is smelled near the carburetors, or in the vicinity of the windows of the engineroom; would you, under all of those circumstances, consider that it was prudent for such a person to enter the engineroom and, without first taking means to ventilate the engineroom, manipulate the electric switch?

Mr. Underwood:

The same objection.

The Court:

I think the question is improper. I will overrule the objection.

A. I consider it would be most improper.

Q. Why do you say that?

A. Because of the hazards that were present, and from my experience the result that was most likely to happen.

Q. Will you explain that to us a little further?

A. I have had several yachts in this country during the last five years blow up from that very act. I don't mean that act on the Seminole, but I mean very similar acts of the type you have described.

Q. Now, Mr. Thompson, without referring to particular cases, but basing it on your experience, will you tell us what hazards are to be expected under those circumstances?

A. Ignition of an explosive mixture by a spark, electric spark.

Q. And in your opinion would that danger be present whether or not gasoline odor was actually detected?

A. Yes.

Q. Why do you say that?

A. Because in my experience it has happened in cases before where gasoline fumes had not been noted.

Q. How can you account for such a condition?

A. Which condition are you referring to now?

Q. A condition where an explosion occurs but the odor of gasoline had not been noted prior to the explosion?

A. Because I think and believe from my experience, an experience of many years, that one can walk through an engineroom where a gas tank is present and, do all that is humanly possible to discover the odor, to discover whether there is gas there or not, and even then I think the hazards remain of explosions.

Q. I am trying to approach this from the point of view of the man who enters the engineroom at this time.

A. All right.

Q. How can you account for the possibility of a man entering an engineroom, and walking to an electric switch and causing an explosion by a spark without up to that time noting the odor of gasoline or gasoline fumes being present?

A. The air being more or less inert in that space, it is quite possible that one could walk through what one might term a lake of gasoline vapor, and the very act of walking through this, the connection between his body and the vapor, the action between his body and the vapor, might displace that explosive mixture and bring it up to the level of his nose where he could have smelled it at a time when a spark was present at that level or below; in other words, a man might go through a chamber, might walk in there, thinking the place was gas free, and by just merely walking through that space, he might displace gas at the lower level and bring it up in the air where he could have smelled it.

Q. Do I understand you to say that gasoline fumes are heavier than air?

A. Yes, sir.

Q. Mr. Thompson, are you familiar with the rules for the construction and classification of composite and steel yachts and the same for wood yachts issued by Lloyd's Register of Shipping, London?

A. I am fairly familiar with them today; I was very familiar with them up to five or ten years ago; for the past 30 "days" I have been using them almost daily.

Q. Will you tell us the source and nature of these rules?

A. Will you split up your question?

Q. First, who issues these rules?



A. Lloyd's Register for the Construction and Registering of Ships.

Q. What is that "Register"?

A. A classification society formed to approve plans for building ships and supervising their construction and upkeep.

Q. Is that an internationally known organization?

A. Yes, sir; their rules are accepted throughout the world.

Q. What do you mean by that?

A. Lloyd's Classification is accepted to my knowledge throughout the country, several countries in Europe; I am speaking of my own knowledge—Great Britain, Canada, United States, Australia, and many others; among the ship owning people here, it is accepted as the highest standard.

Q. What standards do they represent?

A. The highest standards.

Q. Do or do not they represent a standard of prudent practice for owners of such vessels?

A. They are the result of prudent practice; these rules alter; they don't remain static. They are the result of prudent practice, and they are generally accepted as the basis of all standard good practice in ship building and in the upkeep of ships.

Mr. Matteson:

If your Honor please, I offer in evidence the rules for the construction and the classification of composite and steel yachts, and because they refer to the second volume, rules for the construction and classification of wood yachts, I offer that volume also in evidence.

Mr. Underwood:

If your Honor please, I object to these on the ground that I mentioned previously in respect of other similar

exhibits, namely, that they are not promulgated by any constituted authority and have no binding effect on this respondent. I further object to them on the ground that they are merely rules, made by self-constituted persons to apply to certain vessels that can be classified in a particular society, and it is unimportant here as to whether or not the Seminole complied with these rules, because she was not classified and there were no legal requirements requiring her to be classified. I also object to them on the ground that they purport to be promulgated by persons foreign to the United States, and the test in this case is what was the reasonable and prudent thing to do in Florida in June, 1935.

The Court:

I will admit them under the same theory that I admitted the other rules in evidence.

Mr. Botts:

I think your Honor is eminently correct in admitting them that far, but I would like to suggest that I believe authority can be produced that these rules are admitted to a further extent than has been suggested, and without attempting to present that question at this time I would like to reserve the privilege of presenting authority to the point that they are admissible to a greater extent than already indicated, and I will later urge broader scope of these rules. I want to reserve the privilege of urging at a later time the broader scope of these rules, without apparently taking issue with the Court's ruling, because I have not had an opportunity to present the authorities that it is my impression can be produced.

The Court:

You may make that reservation, but I prefer to make the ruling just as I have. If you wish to urge that on final hearing, you may have that privilege.

Mr. Matteson:

May I have the same privilege?

The Court:

Yes.

(Thereupon rules for the construction and classification of composite and steel yachts were marked Libelants' Exhibit 101; and the rules for the construction and classification of wood yachts were marked Libelants' Exhibit 101-A.)

Q. Mr. Thompson, referring to these two exhibits which have just been marked Libelants' Exhibits 101 and 101-A, will you tell us whether or not in your opinion the provisions of these rules represent a standard of safe practice for owners of vessels of the type of the Seminole?

A. They undoubtedly do.

Q. Is that your opinion whether or not the vessels are classified under Lloyd's rules or are applicants for classification?

A. Yes, sir.

Q. Are you familiar with this document, Libelants' Exhibit 27, entitled "Regulations Governing Marine Fire Hazards", issued by the National Fire Protection Association, International?

A. I have read those rules.

Q. I will ask you whether or not in your opinion these rules represent a standard of safe practice for yacht owners of the type of the Seminole.

A. To my recollection, from reading the rules, I believe they are.

Q. Do you know Mr. E. D. Wright of New York?

A. Yes, sir.

Q. I show you Exhibit 24, consisting of a set of rules entitled: "Regulations for the Prevention of Explosion

and Fire on Motor Boats, approved by the National Board of Fire Underwriters", signed and approved October 7, 1929, by A. C. Hutson, Assistant Chief Engineer, National Board of Fire Underwriters. Are you familiar with these rules?

A. I have read these rules.

Q. I will ask you whether or not in your opinion this set of rules represents a standard of safe practice for owners of vessels of the type of the yacht Seminole.

A. As far as I can recall from reading the rules from time to time, they do.

Q. Do you know anything of Mr. Wright's connection with these rules?

A. Yes, sir.

Q. Will you tell us what that is?

A. Will you make your question a little clearer?

Q. I asked you if you knew Mr. Wright's connection with these rules and you said that you did. Now I want to ask you what you know about that connection.

A. From my knowledge he is an authority accepted by the underwriters and his advice is accepted by many owners I have spoken to and by all captains and engineers of yachts to whom I have referred those rules, and also by the ship owners to whom I have referred the rules.

Mr. Matteson:

That is all.

Mr. Botts:

Mr. Underwood, I have a few questions, and it has just occurred to me that you could go on and examine the witness—

Mr. Underwood:

No; I suggest that you go ahead.

By Mr. Botts:

Q. Mr. Thompson, with respect to a tank such as you have described on the Seminole, with a single riveted bottom, that is, convex under the bottom, elevated in the center,—I understood you to make some statement with reference to the question of whether or not a tank as you viewed in the Seminole could or would probably leak after a period of 14 years. Just what was your statement in that connection; was it to the effect that the tank would probably leak or would inevitably leak?

A. I can't recollect just what I said, but it would inevitably leak. I am not expressing an opinion on that tank; I am expressing what I have discovered through experience over a matter of thirty or forty years, that is, a tank of that description must inevitably leak. It may not leak to the extent where you could definitely see a definite leak, but there would be a definite leakage in many parts of that tank, exterior.

Q. You mean seepage of gasoline?

A. Of liquid gasoline; liquid gasoline in the form of vapor. It is my opinion, based upon experience, that it is almost inevitable that it would leak, that is, you could see drops in certain parts.

Q. If it showed seepage leaks, not in drops, or whether it showed any drops of gasoline, would it have been possible in the positions of these tanks, to have detected such a seepage or dripping leak in all parts of the bottoms in each and every one of these tanks?

A. Please separate that for me, if you will. You have asked me many things in that question.

Mr. Botts:

Read him the question.

(Thereupon the preceding question was read by the reporter as above recorded.)



A. It would only be possible to discover that seepage or that leakage at the places where the surfaces could be readily examined.

Q. As I understand it, Mr. Thompson, many parts of the bottoms of these tanks could not readily be examined.

A. Not only the bottoms but the whole of the tanks, as I have already stated.

Q. With reference to a gas line indicated by Exhibits 2 and 17 you made some statement with reference to the certainty or probability of seepage from such a gas line. Was it your testimony with reference to the certainty or possibility of such a seepage?

A. Certainty.

Q. During the course of time?

A. Yes.

Q. With a vibrating vessel?

A. Regularly and persistently.

Q. Now, Mr. Thompson, in the course of your testimony with reference to a proper installation of gas lines, you mentioned the absence of what you called "expansion bends" in the gas line, as indicated on the Seminole. Just what do you mean by "expansion bends"?

A. Yes. They go in the engineroom line where vibration is likely to be felt. The pipes should have had copper bends, almost 340 degrees bends; anything up to 360 degrees; that is, a complete circle.

Q. In the nature of a coil spring?

A. Yes.

Q. And they are for what purpose?

A. In order to take up the stress due to vibration set up by the hull and/or machinery.

Q. If there were one or more of these expansion bends between these bends the vibration would be absent or minimized, is that correct?

A. It would be largely absorbed or eliminated.

Q. Now you stated that a drawoff valve—

A. May I correct that previous answer?

Q. Certainly.

A. I said the effect of that vibration from the hull and or machinery would be largely absorbed so that its effect would not be noticed on the piping. I hope that is clear.

Q. Now in mentioning the drawoff valve in the Seminole and in condemning drawoff valves in engineroom, in connection with that statement, Mr. Thompson, I would like to ask you whether or not it is possible, from your experience, to draw off gasoline from an open spigot or simple connection to a pan in an enclosed room without thereby creating more or less gasoline fumes in the enclosed room?

A. I say it is impossible.

Q. In the location in which the gasoline tanks on the Seminole were placed, you stated that there was no manhole.

A. That is right.

Q. Through which access could be had to the inside?

A. Yes.

Q. I will ask you if there were points of access to the exterior portion of the tanks by which they could be inspected and the state of their deterioration or otherwise determined.

A. I thought I had already answered that fully, that it was impossible to examine them—I would say it was impossible to examine the exterior of the tanks at all. The fact that I could see a little bit of a tank here and a little bit of a tank there through a small hole would not affect me at all; I would condemn the whole thing and say these things are definitely improper.

Q. If this condensation on the inside or the effects of salt air and vapor on the outside had caused the rust-

ing of these tanks it would have been impossible for you to have determined that; is that correct?

A. Impossible to determine it, sir.

### Cross Examination.

By Mr. Underwood:

Q. What was your first employment after you came to this country?

A. I was from the outset and still am an independent surveyor. Do you mean by that, Mr. Underwood, my first job as an independent surveyor?

Q. Yes; your first job of any kind.

A. I am afraid I cannot recall the actual survey, but one of the first I recall was about a month after I arrived here and it was a survey of the Governor of Maryland's yacht which had become a total loss or practically a total loss by explosion and fire at Baltimore.

Q. What was the name of it?

A. It is a very short name; it was a three or four word name; I just can't recall it at the moment. My brain is not operating as it ought to, perhaps. I cannot just recall it now.

Q. On whose behalf did you survey her?

A. I surveyed her on behalf of the underwriters of that yacht.

Q. When was that survey?

A. Approximately in the month of April, 1932.

Q. When did you come to this country?

A. From memory, sir, I think it was in the early months of 1932.

Q. Are you sure of your year?

A. I am fairly sure as to the year.

Q. Wasn't it 1934?

A. That's my second trip—I had gone to England, and I came here in 1932, I think it was.

Q. How long did you stay when you first came?

A. About six months.

Q. How many more surveys have you made?

A. In that year?

Q. In that six months period.

A. That being a slack period of yacht surveys in the early months of the year, I think probably had a dozen or two surveys.

Q. Do you have your records here?

A. No.

Q. Didn't you know that your qualifications as an expert were going to be inquired into?

A. Probably I thought they would be, Mr. Underwood.

Q. Where are your records?

A. My records are in 90 John Street, New York, but I don't know that my records would go back as far as that; it would be merely—I do not have a system of bookkeeping; my income arises from fees; it is just plain fees, and I keep no system of bookkeeping. I keep a copy of the report until the fee is paid and perhaps for a few months afterwards, and then I destroy them from year to year, more or less.

Q. So it is impossible for me to check up from your records on what surveys you were appointed during the year 1932?

A. I don't think it is impossible at all. I think I could, with some little trouble, possibly get you a full list of surveys I held in the period you named.

Q. Tell me all you remember in the six months you were here in 1932.

A. Of what?

Q. Surveys that you held in the six months period in 1932.

A. I remember no more at the moment than I have already answered.

Q. And that is the Governor of Maryland's yacht?

A. No; I think I said a dozen or two other surveys.

Q. Tell me about them; I want the names of the boats and the places and the circumstances.

A. I don't recall them now.

Q. Can't you remember any of them?

A. I don't think I would try to remember them, because I surveyed several of the same boats in different years. Just to pick out a boat, any particular boat, that I held survey on,—I am afraid I couldn't do that from memory.

Q. Do I understand you correctly that your recollection is such that you cannot remember the name or the circumstances of any survey that you held in the six months period of 1932 except the yacht of the Governor of Maryland.

A. That is the only one I can recall at the moment. If I recall them later, I will be pleased to let you have the full particulars.

Q. You came back here in 1934?

A. Yes.

Q. In the month of May?

A. No, I think it was—I think I actually arrived here on March 23rd because that happens to be my birthday. I think that is the day I actually got back.

Q. When did you resume your employment?

A. Immediately. Do you mean my practice as an independent surveyor?

Q. Your employment, whatever it may have been.

A. Immediately.

Q. You went to the office the next morning, did you?

A. The next day, yes; no—excuse me—I am not quite certain as to that. Yes, I think I did, and I know I went to Cincinnati for a short stay shortly after my arrival to see my boy.

Q. What was your first survey after your return to this country in 1934?



A. I cannot positively remember. I survey on an average of 200 to 250 boats a year.

Q. Do you have records on the surveys that you attended between March, 1934, and June, 1935?

A. I think the only records I will have now will be for possibly the last six or nine months, because some of the fees have not been paid. Generally from year to year I am in the habit of tearing up survey reports and the copy of the bills. I keep no books, except a bank book.

Mr. Underwood:

If your Honor please, I should like to require the production of this witness' records so that I can ascertain from them the surveys he attended and the nature of those surveys from 1932 until the time of this particular fire.

(Extended legal argument.)

The Court:

He said his records are in New York, but that he would do his best to make out a statement or list and furnish it to Mr. Underwood. Is that what you wish to do?

The Witness:

I think it would be very difficult, your Honor, because I destroy records from year to year; it would be largely from memory, unless the bank book happened to show the name of the boat, which I don't think it would do. I think I would have to trace it from memory.

The Court:

You are not prepared to answer that today, but while you are in attendance on the trial here do you think you could get it up overnight and give such a list to Mr. Underwood on those that you do remember?

The Witness:

I don't think so, your Honor; I don't really think I could.

The Court:

Can't you remember any of them?

The Witness:

I don't think now it would be fair to the Court for me to strain my memory that way, because I would make mistakes, and because I have some of the boats, some of the same boats, coming on periodically, and it is almost impossible to single out any particular survey on a boat for any particular year.

The Court:

Those that come on periodically, could you give a list of those?

The Witness:

Yes. I think I have the survey reports for the past year, because those records are not destroyed. I would have to get those from New York. I could send a night letter to New York and get them down here by airmail, your Honor.

Mr. Underwood:

I am not interested in surveys since the time of this fire; I am interested in the surveys prior to that time.

The Court:

He said he destroyed his records, Mr. Underwood. I cannot require him to produce any records that he destroyed, even if I were so disposed.

The Witness:

I am an independent surveyor, your Honor. I do not have space to keep them. I have just an office which I pay rent on, and I have the use of stenographers as I need them. I do not keep a lot of files to encumber the small space that I have. I really do not have room enough to keep these records there. My office is furnished with antiques and I have no filing cabinet, and things of that kind are destroyed from year to year; I destroy them in order to get rid of them and have space.

The Court:

The Court sees no occasion to require the witness to produce the record called for.

(By Mr. Underwood):

Q. You have office space with the firm of Albert Lee & Co.?

A. Albert R. Lee, Inc.

Q. They are insurance adjusters at 90 John Street?

A. They are insurance brokers; not insurance adjusters.

Q. You are a brother-in-law of William Stevens?

A. Yes.

Q. Who is the head of the Loss Department of Chubb & Son?

A. That is correct. I might explain that the head of the Loss Department of Chubb & Son just recently died at the age of 84. I don't know if he has been succeeded since by another member of the firm. The active head is my brother-in-law, William Stevens, but I could not definitely say he is the head of that department.

Q. You do a great deal of work for Chubbs'?

A. I do.

Q. You represent underwriters in a great many surveys that you attend?

A. Yes, in a measure.

Q. A substantial part of your income is derived from the work you do on behalf of underwriters, is it not?

A. That is so.

Q. How old are you, Mr. Thompson?

A. I am 57 today.

Q. Now you stated that you served an apprenticeship of several years in England, is that correct?

A. Yes, sir.

Q. Between 4 and 4½ years at Newport?

A. About that, to the best of my recollection.

Q. What was the name of the concern?

A. Mordey-Carney Co., Ltd.?

Q. What was the nature of your work?

A. I started there as an apprentice draughtsman. After that I had certain experience as a junior draughtsman for 2½ years, and then I was put on the designing of vessels. I did the complete designing and did all of the layout work and superintending in the constructing of the vessel.

Q. While you were an apprentice?

A. Yes.

Q. What types of vessels?

A. In the apprenticeship there were all types; there were no yachts in that period, but various types of commercial vessels mostly steam propelled.

Q. Following your experience at Newport you proceeded to where?

A. To Stroud's.

Q. You spent approximately one year there as an apprentice?

A. Yes.

Q. As a draughtsman?

A. As a draughtsman; there they built steel vessels only; that firm name has been out of existence for many years.

Q. What is the name of the firm?

A. Edwin Clark & Company, I think.

Q. What was the nature of your work there?

A. The same work as I started at Mordey-Carney, with the exception that fully 50% of my work there was in connection with the building of boilers and engines.

Q. Your next connection was as an apprentice at Thornycliff?

A. At Woolston Yards, which were then controlled by the firm with whom I was originally connected as an apprentice at Newport, Mordey-Carney Co. They were associated with that yard, and I was sent there the last year of my apprenticeship.

Q. You completed your apprenticeship there, did you?

A. Yes.

Q. What was the nature of your work?

A. Similar to what I had been doing, only on larger vessels and large yachts; all steam at that time.

Q. What was your first employment after you finished your apprenticeship?

A. I went with the Fairfield Shipbuilding Co. in Glasgow.

Q. How long were you employed there?

A. About six months, I believe.

Q. Beginning in what year?

A. I don't recall. May I look at this paper?

Q. You can. Do so. You may refresh your recollection in anyway you desire.

A. I have no document; I will have to work the thing backwards.

Q. All right.

A. I went there just about at the conclusion of the Boer War. My history is not good enough to remember the year that was; it would take me sometime to do it; I would have to work the thing out backwards.



Q. I would like to have you tell me as accurately as you can what year you say you were employed by the Fairfield Shipbuilding Co. in Glasgow.

A. As accurately as I can now?

Q. Yes.

A. I know I had my twenty first birthday there, and I know how much it cost me to buy beer for the high officials there. I was twenty one then and I am fifty seven now, so you can figure it out.

Q. It would be 1903, wouldn't it?

A. About 1903.

Q. What was the nature of your employment there?

A. Ship draughtsman.

Q. Did you specialize on any part of the vessel at that time?

A. All of that time I was on fighting ships; that is the only experience I had there; they were super-dread-naughts.

Q. From Fairfield Shipbuilding Co. where did you go?

A. To the London office of Armstrong-Whitworth Co.

Q. And that was about 1904?

A. That would probably be still in 1903.

Q. How long were you with Armstrong-Whitworth Co.?

A. In the London office?

Q. All right.

A. I left then because my father bought me an interest in a shipyard.

Q. How long were you there?

A. About 6 months, in the same year.

Q. What was the nature of your employment there?

A. There I was occupied with the design of ships and also with the design and installation of parts of battle-ships, ash-ejectors and other things I cannot recall in detail.

Q. As a draughtsman?

A. Yes.

Q. You were there some six months, did I understand you to say?

A. Probably about that time, as far as I can recall now.

Q. What was your next employment?

A. My father bought me an interest in a shipbuilding firm called the Dee Shipbuilding Co., Ltd., Queensferry, near—

Q. Where is that located?

A. Queensferry.

Q. Where is that?

A. Near Chester, England.

Q. What water is it on?

A. The Dee River.

Q. How long were you there?

A. To the best of my recollection about five or six years.

Q. What type of vessels were constructed there during that time?

A. Stern wheelers, shallow draft vessels and various types of commercial and passenger vessels.

Q. Propelled by steam?

A. Steam and internal combustion engines.

Q. What was your connection with the vessels constructed there during that time?

A. There I was assistant manager and naval architect.

Q. From the Dee Shipbuilding Company where did you go?

A. I got a connection with a firm of consulting engineers known as Roscoe and Little in Liverpool.

Q. What was the nature of your employment there?

A. Survey of ships; I did a lot of work in connection with Admiralty actions to recover against owners or underwriters of other vessels.

Q. How long were you with them?

A. Approximately two years.

Q. That would be about 1909 to 1911?

A. I am not checking up the years; I am not adding them up.

Q. Will you check these years for me and tell me if they are about right?

A. Now?

Q. Yes; I want to know what years you were with Roscoe and Little.

A. I can't recall it now, but it was somewhere—I left them just shortly before the Titanic disaster; that is the nearest date I can give you as to that; it was around about the time of the Titanic disaster.

Q. Did you say you participated in the construction of ships during that time?

A. Yes.

Q. Damage surveys?

A. Yes.

Q. Commercial vessels?

A. And passenger vessels.

Q. Any yachts?

A. In that particular period?

Q. Yes.

A. I don't recall at the moment about yachts.

Q. Where did you go from Roscoe and Little?

A. I started in my own business for myself as consultant engineer and naval architect.

Q. What year?

A. Immediately after I left Roscoe and Little, the occasion of my leaving them was shortly around the time of the Titanic disaster.

Q. How long were you so employed?

A. I wasn't employed; I was a member of the firm.

Q. How long was your time so occupied?

A. From that period until I left for Australia in the year 1923, I think.

Q. You were engaged from approximately the time of the Titanic disaster until 1923 on your own behalf as a consultant engineer and naval architect; is that the fact?

A. Not wholly; I had other interests at the same time.

Q. Where were you located at that time?

A. Liverpool, England, London, New York, Buenos Aires, Argentina, Glasgow and Cardiff, South Wales.

Q. You mean that you had offices in all of these places at the same time?

A. Yes, all at the same time.

Q. You had offices in these several places all at one time?

A. Yes.

Q. What was the name of the firm?

A. There were two firms; Thompson and MacGregor.

Q. And the other firm?

A. Crichton, Thompson & Company, Ltd.

Q. Where was their main office?

A. London, but not in the same office building; one office was in the city of London and the other one, was in Westminster.

Q. All of those firms were in those two offices?

A. All except the office of Crichton, Thompson and Company; that company were shipbuilding contractors.

Q. Will you describe just what you did as shipbuilding contractors; what were your relationships; were any of the ships built under your supervision?

A. From what period to what period?

Q. From the time shortly after the Titanic disaster until you left for Australia what was the general nature of your work?

A. The general nature of my work all the time I was connected with Thompson and MacGregor and Thompson, Crichton and Company was the designing and building of ships of all kinds. My partner, Mr. Crichton, to a large extent controlled—and I did myself in part—from half a dozen shipyards in Great Britain.

Q. You mean that you had a controlling financial interest in them?

A. Yes, sir.

Q. Did you personally draw plans for the construction of any ships during that period?

A. Yes, I did. Do you mean from the outset?

Q. From the time of the Titanic disaster—

A. When I started I couldn't afford to employ draughtsmen and I did that work personally myself.

Q. Between the time of the Titanic disaster and your departure to Australia?

A. Yes.

Q. On what types of ships?

A. Various types of commercial and pleasure vessels, steam propelled or internal combustion engines.

Q. Can you name any internal combustion vessel the design of which you made or supervised between the time of the Titanic disaster and the time of your departure for Australia?

A. I think I could prepare a list of them, if given a little time.

Q. I would like to have you do that.

A. It is difficult to do, because, you know that shipbuilders don't go by names; we mostly go by number. We refer to them as yard numbers, and it is a difficult matter to go back over records and remember names. We often didn't know the name of a vessel until the last moment, and all during the construction period we went by yard numbers.

Q. You would get a name before the launching, wouldn't you?

A. We got the name at the launching frequently.

Q. Seldom—

A. Sometimes later but not frequently.

Q. You got the name sometime later?

A. Yes; sometimes later but not frequently.



Q. I would like for you to name for me all vessels which were driven by internal combustion engines, the design for construction of which you had in part between the time of the Titanic disaster and your departure for Australia.

A. I will try to get it for you. Most of those I would know by numbers, yard numbers, and not by names.

Q. Let me have all that you recall.

A. I am agreeable to giving you all the information I can. I do not want to avoid answering any question that you ask, but I am not going to strain my memory and give you inaccurate answers.

Q. Did you have any employment with the British Admiralty during this period?

A. Yes, sir.

Q. What type of vessels did you work on for them?

A. All types; most of them were propelled by internal combustion engines.

Q. What particular type of vessels?

A. River vessels for the Mesopotamia and French Canals and coastal defense vessels; there were innumerable types going through there all the time, including vessels built over here. I didn't design those; but they came under my observation. There were about 500 of those built over here.

Q. Let's confine ourselves at the moment to the British Admiralty.

A. They are both. Five hundred of those were built over here the first time, and the second time about 250.

Q. Seven hundred and fifty vessels?

A. About 750 vessels of that type.

Q. What type was that?

A. We knew them as the "suicide type". They were referred to as the "suicide type". I think they were built in various yards here; I think the Standard Engine Co. of New Jersey—

Q. I am asking you what type of vessels they were?

A. Gasoline propelled vessels; coastal defense vessels.

Q. How big were they?

A. The first ones as I remember were somewhere between 65 and 75 feet long.

Q. What was the nature of their propelling power?

A. Twin sets of gasoline engines. I could not definitely give you the horsepower, but several hundred horsepower.

Q. Well, just precisely what did you have to do with the construction of those vessels?

A. Approval of the contracts.

Q. Did you have anything to do with the plans or specifications?

A. No, and I am glad that I didn't.

Q. Did you ever have any direct employment with the British Admiralty or was that as a consultant on the outside?

A. Not direct. I worked at the Admiralty offices with permission solely to supervise the vessels that we were building, and I was responsible for.

Q. Just what was your position with the British Admiralty?

A. Chief designer of auxiliary vessels.

Q. Does that refer to naval vessels?

A. No fighting ships; auxiliary vessels.

Q. Do you call them commercial craft?

A. I call them auxiliary vessels.

Q. Do you say that you were chief designer of commercial craft to the British Admiralty?

A. Auxiliary vessels; not commercial craft.

Q. Did you testify on the third day of November, 1927, in the case that involved a collision between the steamship Grey Cliff and the steamship Tahiti, in Sydney, that you were chief designer of commercial craft to the British Admiralty?

A. That is not correct; it was auxiliary vessels.

Q. Do you deny that you so testified?

A. I did in that respect.

Q. Just what were your responsibilities in respect to the design of commercial vessels while you were connected with the British Admiralty?

A. Auxiliary, are you referring to?

Q. Commercial vessels.

A. Please don't say that I designed commercial vessels. I assume you mean auxiliary vessels. I had in my charge approval of the plans and specifications, and the contracts were also approved by me subject to the approval of the Treasury.

Q. Treasury of what?

A. That was the department where all contracts were passed on.

Q. Did you testify on November 3rd, 1927, in the same case that I have referred to, and at the same place, as follows:

"Q. Were you personally responsible for the designing of any of the vessels while at the Admiralty or for any particular type of vessel.

"A. Yes, all commercial craft at that time; they were under my charge."

A. With the exception of the word "commercial" I did say that, or something to that effect. I cannot say more definitely than that.

Q. You went to Australia in 1923?

A. About that time.

Q. What was the nature of your employment there?

A. The same; I continued as consultant engineer and naval architect. I went there for the purpose of endeavoring to obtain orders for the yards with which I was still connected and in which I was financially interested.

Q. Did you have any occasion with the British Board of Trade between the time of the Titanic disaster and the time you went to Australia?

A. I was appointed naval architect etcetera to the British Board of Admiralty in the year 1915, when the panel was first formed.

Q. Is that your only connection with the British Board of Trade?

A. Yes. I continued in that capacity until I went to Australia; I got permission to go to Australia, and I returned again to England, and then went back again. I resigned for the reason that I thought I would be out there too long a period of time to remain on the panel.

Q. Do you remember the name of the designer to the British Board of Trade during that period?

A. I never heard of any such officer, never heard of such person existing; I do not know that the British Board of Trade ever designed any ships.

Q. You don't know that the British Board of Trade had an officer known as "chief designer of vessels"?

A. I never heard of such a thing.

Q. Have you ever been to sea as an engineer?

A. No, sir.

Q. On any type of vessel?

A. On no type have I ever been to sea as chief engineer or as engineer or in any such capacity. I employed such people for that.

Q. Have you designed any yachts since you have been in this country?

A. No, sir.

Q. Now, Mr. Thompson, you said something about gasline tanks in the Seminole and that condensation would have some effect. What did you say would do the rusting or corroding, or whatever it would be?

A. Whatever condensation would come there would rust this surface here (indicating) and the rivets.

Q. Indicating point "A" on the diagram marked Libellants' Exhibit 99.

A. Shall I make another mark?

Q. No.

A. All right.

Q. That is the water that would do that, is that right?

A. Yes.

Q. So that what leakage you would get would be water, wouldn't it, at least until all of the water gets out?

A. Yes.

Q. So that what leakage you would get would be water, wouldn't it—

A. If there was nothing but water in it you would only have water leakage.

Q. And if the gasoline is in the gasoline tank whatever water was in there would go down inside the tank and condense—

A. Yes.

Q. And that you say causes rust?

A. Yes.

Q. So if you get a leak, that cause your first leak is a water leak, is it not?

A. Possibly.

Q. Because water is heavier than gasoline.

A. That is right.

Q. Will you draw me a diagram of the bottom of a tank with a crown or as you say this one was, just the crown inverted?

A. Inverted?

Q. Inverted as compared with the other one which you drew.

A. All right; this is about right (indicating).

Q. Put your rivets and your caulk in there, please. Draw a line from the place you indicate the caulking; mark it "caulking".

A. (Witness so indicates.)

Q. Now you had better write the word "bottom" on that, because that would be the bottom of the tank, wouldn't it?



A. Yes, that would be the bottom.

Q. And you had better write the word "side" here.

A. (Witness so indicates.)

Q. When condensation occurs in such a tank where does the water go?

A. It attacks the rivets and inside of the caulking, first one and the other.

Mr. Underwood:

I offer this diagram in evidence.

(Thereupon the diagram above referred to was marked respondents' exhibit "P" for identification.)

Q. Did you take any rivets out of these tanks?

A. No, sir; I didn't do anything there. Now, Mr. Underwood, I think you are partly to blame for my limited survey. I want this put in the record.

Q. All right, since you have opened up this subject, will you tell the Court what you mean by that?

A. When I went down there last December you instructed me specifically not to remove anything, and after you said that I took particular pains not to remove anything, even in walking; I didn't want any adverse comments being made about me not obeying instructions.

Q. You made no complaint to counsel who were present there during your examination?

A. No, sir; I am only referring to the fact why I didn't do certain other things.

Q. At all events you removed no rivets.

A. I removed nothing.

Q. Do you know those tanks were manufactured?

A. How they were manufactured?

Q. Yes.

A. I don't know; I was not present at the manufacturing of them.

Q. Do you express it as your opinion that the rivet holes were punched?

A. That is what they appeared to me to be.

Q. Could you see any of the rivet holes?

A. No.

Q. You could see the heads of the rivets?

A. Yes.

Q. You could not see the points of the rivets?

A. Yes.

Q. You saw the points of the rivets?

A. I could see the rivets on one side and then the other.

Q. Well, you could see the whole bottom of the tank.

A. Yes.

Q. How could you see the points on the rivets through what opening; just tell me?

A. Through the opening of number one, where the bottom part came through to the bulkhead.

Q. You could see the points of the rivets through that opening?

A. I took them to be the points; the rivet point was on the outside and the head was on the other side.

Q. You mean these rivet heads were driven in from the inside of the tank?

A. I assumed from their shape that they were hammered down and forced in from the inside and hammered on the outside; I couldn't see the entire side clearly.

Q. You could not see the heads of the rivets?

A. I could see the rivets inside, but not quite so well.

Q. I show you this Exhibit 4.—I am simply asking you this question: do you say that these (indicating) are the heads or the points?

A. I saw the rivet point and not the head at the time—

Q. Do you say that you could see any part of the rivets on the other side of the—

A. I just glanced up and looked at them; I got an imperfect view of the other side of the rivets.

Q. You expressed the opinion, based upon your observation that the rivet holes were punched.

A. Not from that, but from the fact that they were not in line. I think this photograph is quite clear on that. That was my opinion at the time I saw them and that is my opinion still, after looking at the photograph again.

Q. You say that they are not in a straight line?

A. In my opinion they are not.

Q. Look at Exhibit No. 4 again; is that one of those on which you base your opinion that the rivets are not in line?

A. No; I based it on the tank and it is confirmed by this.

Q. Do you say that that photograph shows the rivets not in line?

A. Yes.

Q. Will you lay a straight-edge along there for me?

A. I haven't; I would say that these rivets are not in a direct line.

Q. Will you lay a straight-edge along there and show me that?

A. I haven't tried.

Q. Can you?

A. I haven't tried it.

Q. Have you got a straight-edge?

A. This is a photograph—

Mr. Underwood:

If your Honor please, this witness has said that the photograph confirms it.

The Court:

It is 5 o'clock, so we will stop for the day. We will resume tomorrow morning at 9:30.

(Thereupon an adjournment was taken to 9:30 a. m., March 24, 1939.)

March 24, 1939, 9:42 o'clock a. m.

Court reconvened, and the hearing was resumed pursuant to adjournment of the previous day. Appearances as heretofore noted.

1236 Thereupon R. J. A. THOMPSON resumed the stand and upon:

Cross Examination (Cont'd.)

By Mr. Underwood:

Q. Did you prepare a list for me, Mr. Thompson?

A. I prepared a list from memory. I don't quite recall what particular boats you were referring to.

Q. Just tell me what you have got on your list, please.

A. I have got a list here of certain boats that were built from about a few years before the war and during the war.

Q. During what years?

A. I can't definitely give you the beginning or the end.

Q. Give me the best you can.

A. Probably from 1908 or so to some time during the war.

Q. Now, just what did you have to do with the construction of these vessels?

A. These particular boats, in practically all cases, I designed them, and superintended the construction of them.

Q. By design what do you mean? Did you lay out all the plans?

A. Practically all the plans,—that is, with a staff, Mr. Underwood.

Q. Well, that is precisely what I want to know. Just what plans did you make for these vessels on this list?

A. Myself?

Q. Yes. Did you lay out their lines?

A. Of these?

Q. Yes.

A. No, sir; I had a draughtsman for that.

Q. Did you draw the specifications?

A. In many cases, yes, sir.

Q. What else did you do?

A. I supervised the laying out of the working plans, supervised the ordering of the full material.

Q. What do you mean by supervising the working plans?

A. Regularly visited the draughting office, conferring with the chief draughtsman or the particular draughtsman that was on the job; approving of the plans before they were issued. Ordinary duties of a naval architect of a reputable company.

Q. What types of vessels are these on this list?

A. This is practically,—either gasoline or what we call, not exactly crude oil, and not a fuel oil; a heavy oil with a certain amount of volatiles in it.

Q. Is that what you call paraffin?

A. Paraffin? No paraffin is different,—the paraffin is more in the nature of a gasoline; almost requires the same care, in the installation of tanks.

Q. What type of propelling power did these vessels have?

A. Various types, from two-cycle gasoline motors, four cycle and paraffin; with lamps fitted for keeping the evaporators hot; and semi-Diesels.

Q. Let me see it.

A. I am afraid you won't be able to follow it very well; these are rough, some quick notes made last night



from memory only, and it wasn't an easy job to go back over all that time.

Q. Mr. Thompson, I want their names so I can identify them.

A. I am afraid that in the vast majority of the cases I am unable to give you the names. We knew all our boats by yard numbers; everything was filed away after they were completed, under a yard number; never under a name. The whole system in every shipyard, to my knowledge, of vessels built, are built under yard numbers; they are entered in books, even in ledgers and things like that, under yard numbers; they start with a yard number, and they finish with a yard number; frequently we never hear the name of the boats, proposed names until perhaps a week or two before she is finished. The naming has very little connection with the building of a ship. It is known constantly before, during and after construction, by the shipyard number; all plans and specifications and copies of orders, all the bookkeeping go under a yard number of that boat; it is impossible to keep records properly otherwise.

Q. Can you give me, Mr. Thompson—have you finished that answer?

A. I believe so, sir.

Q. Can you give me the name of any vessel, the design and construction of which you were responsible for, from 1923 I think you said,—that is when you went to Australia?

A. I said, during the war and before; I think I said somewhere in the neighborhood of 1908, was it?

Q. When you began your firm of consulting naval architects.

A. Is that Thompson and McCormick? Because, remember, there was more than one firm of consulting architects.

Q. When you began—left the shipyard and went into business for yourself?

A. That was immediately following,—after I left the firm of Roscoe and Little; that was slightly before or after the Titanic disaster; that is as near as I can go. I think that is somewhere near 1911, I should say.

Q. You were so engaged until you went to Australia?

A. Yes.

Q. Can you give me the name of one ship for the design and construction of which you say you were responsible during that period?

A. The name? Any ship? Any type of ship?

Q. Any ship.

A. There was a yacht I built for Mr. Chrichton.

Q. What is the name?

A. —who afterwards became my partner.

Q. Please; I didn't ask you for the history of the boat or the history of the purchaser. I just want the name of the boat. Something I can look up in Lloyd's and check.

A. Look up in Lloyd's? You mean Lloyd's Register of Shipping?

Q. Just tell me the name. You understand my question, the name of any single vessel, for the design and construction of which you were responsible, from the time you went into the business of consulting naval architect until you went to Australia.

A. Would you let me have Lloyd's Register and I will give you several.

Q. I want your testimony as to the names.

A. I say names are nothing, as I have already said. I can't just recall.

Q. Mr. Thompson, can you or can you not name one?

A. May I—

Q. No, not yet.

A. If it is a test of memory, I would rather not answer the question.

Q. Can you or can you not name one now, as you sit in the witness chair?

A. I could probably remember a dozen when I left the chair.

Mr. Matteson:

If your Honor please, the witness indicated that he would like to see a book that I have in my hand. I think he is entitled to refresh his recollection, if he would like to do so.

The Court:

Well, I think he is entitled to answer, as to whether he has an independent recollection or not before he refers to that.

Mr. Botts:

It seems to me he has answered that question half a dozen times. The fact that he does not answer it to suit Mr. Underwood I don't think prevents it from being an answer.

Mr. Underwood:

I am entitled to a categorical answer.

The Court:

If the witness wants more time to think of it on the stand, he may have it; otherwise, he can just answer now.

A. I think, if your Honor please, I would like the answer to remain as it is, if I could have permission later without looking at it, to give the names of several.

The Court:

Just for the purpose of thinking it over?

A. Yes, sir. I just want to be quite clear on that point, sir. Names matter very little with us; the yard numbers would be what we went by.

The Court:

All right.

Q. Do you remember any yard numbers?

A. From one to about four hundred in one yard, of which I have a book here giving a record of many of those.

Q. What yard?

A. J. Crichton and Company, Ltd.; Saltney Shipyard, Chester; this is the yard that I designed, that I laid out the yard and was originally the manager for Mr. Crichton; afterwards I left his yard to become his partner in other businesses.

Q. Can you name the years?

A. I designed and laid out that shipyard in the year preceding the war,—1913.

Q. And when did you leave?

A. I left to go to London in either the end of 1914 or the beginning of 1915.

Q. Now you speak of hull numbers one to four hundred.

A. Roughly, from one to about four hundred.

Q. What types of vessels were they? Were they all the same type or different types?

A. No, they were mostly steel, Mr. Underwood.

Q. What types of vessels?

A. Ranging from small tenders of about 30 feet to stern wheel steamers up to 200 feet, or slightly over.

Q. What propelling power?

A. Steam, gasoline and other types, and internal combustion.

Q. How many of them had gasoline driven engines?

A. Do you seriously wish me to answer that?

Q. Yes, of course, I am serious in every question I ask you, Mr. Thompson.

A. Well, you are very flattering to my memory, Mr. Underwood.

Q. Please do the best you can.

A. I will do the best I can. The proportion?

Q. As accurately as you can get it.

A. I should imagine, oh, roughly speaking 20 per cent, but that is a guess; I can't pretend to go nearer than that.

Q. Since 1923 have you been responsible for the design of any gasoline driven yacht?

A. Since 1923?

Q. When you went to Australia?

A. I don't think so, Mr. Underwood.

Q. Since 1923, have you supervised the installation of the gas engine, gasoline tanks and equipment in any yacht?

A. I have in part; that is, mostly under repair or renewal.

Q. Not, original installation?

A. I cannot recall an original installation in that period.

Q. Have you operated a gasoline driven vessel?

A. I have owned two motor crafts myself,—if that is what you mean by that; and operated those; but they have been pleasure boats.

Q. Have you ever been in charge of the operation of the motors or the engine machinery?

A. Only those two I mentioned.

Q. Gasoline driven?

A. Only those two I mentioned.

Q. How long ago was that?

A. That was when I was living in Chester; that was somewhere prior to 1915. The second one was when



I was living in London after 1915 when I owned a motor launch on the Thames.

Q. Did you ever run a motor launch yourself, handle the machinery yourself?

A. Yes, sir.

Q. As an engineer?

A. Yes, sir.

Q. What type of vessels were these?

A. Pleasure craft, for my own purposes.

Q. How big?

A. Roughly about 30 feet.

Q. Open cockpit boat?

A. Open vessels, yes.

Q. You mentioned yesterday that, as I recall it, you had an interest in six shipyards, financially. Will you name those yards for me?

A. Financial interest in five I think, and the control, I think it was six; Saltney Shipyard—

Q. Give me the years again.

A. The Shipbuilding Company, Ltd.

Q. Will you please name the year after the yard?

A. Well, as near as I can?

Q. Yes, as near as you can.

A. I am trying my best, your Honor, but these dates are very complicated; various dates; I will do my very best. I have no desire to keep back anything. The Shipbuilding Company Ltd., I was a director and part owner, in the years, I should imagine about 1905, your Honor, to 1910 approximately. I think it was that period I went with Roscoe and Little, consulting naval architects and marine engineers in Liverpool. I think the next when I was on my own as a consulting naval architect and engineer, I received an order from Mr. Crichton to design a yacht for his own purposes; I did that. We got friendly during that, and he asked me to join him, and to start shipbuilding with him.

Q. Mr. Thompson, I dislike to interrupt you.

A. I will just give you the next date; I will do my best.

Q. All I have asked you is the names of the yards and dates, not history, but just that.

A. I then started the Saltney Shipyard at Chester, J. Crichton and Co., Ltd.; that was approximately in the year 1913; I know it was about a year before the war.

Q. Are you telling me the yards in which you had a financial interest?

A. Yes. J. Crichton and Co., Ltd., Saltney Shipyard, Chester; I was director and had a substantial interest in it.

Q. Give me the rest.

A. Do you wish to know the interest or the amount?

Q. No; I just want the names of the yards in which you had a financial interest.

A. Yes, sir.

Q. And the years, as nearly as you can give it.

A. Then some time in the early part of the war, Mr. Crichton purchased—

The Court:

Without going through the whole history, can you just give the ultimate facts and let the Reporter have those?

A. A financial interest in Hawthorne & Company, Ltd., Leeds, Scotland; well-known yacht builders of the largest types; that was about 1915 or '16; around about the same time I purchased personally a small shipyard at King's Lynn and I owned that shipyard myself, outright; that was known as the King's Lynn Shipbuilding Company; that would be somewhere about 1916 or '17, your Honor. At about the same time I joined Mr. Crichton in the purchase of a shipyard at Connah's Quay,—that is in North Wales; that would be somewhere just before

the end of the war; probably the early part of 1918, or the end of 1917. Then at about the same time—no, a little before that, an interest in the firm of C. & H. Crichton, Ltd.,—the same Crichton; that was mostly ship repairs, but a little building in Liverpool. It was a very large firm in Liverpool; that was about, I should say 1917, or so. I think I have covered the yards,—the financial interest. That is, the financial interest only you are asking, Mr. Underwood?

Q. That's right. Have you finished, Mr. Thompson?

A. I don't know; I have answered all your questions, Mr. Underwood.

Q. I asked you for the six shipyards in which you had a financial interest. Have you named them all?

A. I think that is the lot, so far as my memory goes now. I don't know how many of those I gave you.

Q. Since you came to New York, your principal occupation, as far as yachts is concerned, has been in connection with their repairs, has it not?

A. Repair and revamping of the machinery.

Q. Do you remember testifying in the suit involving the Selenia and the Arcadia?

A. I do sir, quite well.

Q. Did you testify there, folio 2244, "Q. And how long have you been located in New York, Mr. Thompson?" "A. About four and one half years." "Q. And what has been your occupation here?" "A. Principally in the repair of yachts."

A. I think substantially that would be a correct reply to your question, probably put to me there. As I said, yesterday, I came here I thought in 1932, first, but actually I looked up my passports last night, your Honor, and I find it was the end of 1931. But I remember now, after that was called to my attention, that I was here I know before New Year's day in '32.

Q. Reference was made yesterday to Lloyd's Rules for the construction and classification of composite and steel yachts and rules for the construction and classification of wood yachts, which are marked Exhibits 101 and 101-a. Can you name any American yachts that have been built pursuant to Lloyd's Rules?

A. American yachts? Well, the one I had a survey on this week, the Chelena.

Q. Any others?

A. The Renee, another boat I am surveying.

Q. Spell these names.

A. C-h-e-l-e-n-a.

Q. Any more?

A. The Renee: I am naming boats in the port of Miami now.

Q. Any more?

A. The Pegasus; I am afraid my earlier education has almost left me.

Q. Any more? Go on naming all you can.

A. Well, I will do the best,—this is a test of memory. The Renee, Chelena and Pegasus; those are the only three I can remember just at this moment in the port of Miami. The Vanda, that is another boat about 250 feet, that I revamped the machinery of a year ago. The Alder, another boat of about 250 feet, 240 feet. The Intrepid; all large yachts at present, your Honor. The Seaborn, belongs to Mr. Hughes, the flier, I would rather think. The Moana belongs to William Leeds; these are still large yachts. Commodore James' large yacht that was recently broken up,—I will think of the name in a moment,—she was a large yacht, was a large yacht; and the Guinivere, belonging to Mr. Palmer, the zinc king; she is a boat of about 200 odd feet. The Hi-Esmaro, a boat of about 200—250, belonging to Mr. Johns-Manville. These are all yachts, your Honor, that I deal with regularly, and are built at Lloyd's and stationed more or less in

American waters, and belong here in all instances to American owners.

Smaller boats, it would take time. I don't recall them one by one and the owners' names; but there are quite a number, Mr. Underwood; I would be glad to give you a list if you would be good enough to give me a little time.

Q. Let me put my question in another way: Do you say that the majority of American yachts are built subject to Lloyd's Rules?

A. I do not; I have never even suggested that, Mr. Underwood.

Q. A portion?

A. A proportion.

Q. Of American yachts, would you say, are built subject to Lloyd's Rules and are classed in Lloyd's under these rules?

A. Highly complimentary; I don't think I could give you the proportion.

Q. Have you ever looked through the book, Lloyd's Register?

A. Not with that in view, Mr. Underwood. On innumerable occasions.

Q. Do you have any idea what percentage of American yachts are classified in Lloyd's or were in 1935, or built under Lloyd's Rules?

A. Having a lively recollection of my oath, I prefer to say, no.

Mr. Underwood:

If your Honor please, the last Lloyd's Register that I have is dated 1933; I don't have a 1935 copy.

Mr. Matteson:

If your Honor please, we have a 1933 copy which was marked as an exhibit in connection with the deposition



that was taken in New York before the trial began. I haven't offered the deposition here yet, but the book is here; I take it it is a duplicate of the one Mr. Underwood has in his hand.

Mr. Underwood:

I don't think either one of us has a subsequent edition.

Mr. Matteson:

You are going from the book and I am going from the deposition and the book.

Mr. Underwood:

Then we can refer to that for all purposes, I take it?

Mr. Matteson:

No reason why not; it is there.

Q. Mr. Thompson, before you began your apprenticeship, will you tell us very briefly what your education was? Did you go to any technical school? I am getting at—

A. During the course of my apprenticeship, I went to two technical schools.

Q. Prior to, I said.

A. I will come to that,—no, sir.

Q. Now what technical schools did you go to during the course of your apprenticeship?

A. The Newport Technical school, first, and later I removed to Gloucestershire, during one part of my apprenticeship, I think it was called the Stroud Technical School.

Q. Did you get anything in the nature of a diploma from either?

A. I never sat for one, sir.

Q. So that you did not get one?

A. I did not get one.

Q. You are a metallurgist?

A. No, sir.

Q. Are you an electrician?

A. No, sir.

Q. Are you a boilermaker?

A. I was trained in boiler-making; that was part of my training.

Q. Mr. Thompson, in the shell of a cylindrical tank are the stresses which are parallel with the axis of the tank as great or greater than those at right angles to those stresses?

A. I don't quite get the question.

(The question was read.)

A. I don't think I could say at this time, sir.

Q. You don't know?

A. I would rather prefer,—to shorten it, I would rather say I don't know.

Q. You have said something about double riveting on these tanks?

A. Yes.

Q. —gasoline tanks, on the Seminole.

A. Yes, sir; not double riveted, lower seam.

Q. You say they were not double riveted?

A. I said the lower seam was not double riveted; that I believe was my evidence.

Q. And is that the extent of your knowledge about how the seams were riveted on those tanks?

A. The lower seam, I know it was single riveted.

Q. And do you say the lower seam should have been double riveted?

A. In my opinion, from good standard practice over thirty years, I say it must be double riveted.

Q. And for what reason?

A. To make a stronger and tighter joint.

Q. Can you calculate the stress to which the rivets at the bottom of such a tank would be put, when the tank was full?

A. I have not, sir.

Q. Can you?

A. Possibly; but in the light of the small stress that comes on that, that small sized tank, I don't think it is necessary.

Q. You gave me a double answer; you put it on two grounds, strength and tightness. Do you want to hold out for both or do you want to abandon strength?

A. No; it is the tightness I refer to; that is what I was referring to.

Q. And you abandon strength as the reason for double riveting on those tanks?

A. I have not attacked the tanks on strength, in any way. Tightness is what I referred to, or intended to refer to, all through.

Q. From which side do you say the rivets in the bottom of those tanks were driven?

A. I considered, in my limited survey, they were driven from the inside, which I would call normal, good practice.

Q. And the points were on the outside?

A. Points were on the outside; I should be very much surprised if they were riveted otherwise, and I should consider it bad practice.

Q. Did you form any opinion as to when these tanks were galvanized with respect to the riveting?

A. No, sir; I saw very little of the tanks. It was impossible to see much of them, let alone examine them.

Q. You formed no opinion as to whether they were galvanized before or after riveting, or both?

A. No, sir; oh no.

Q. Do you know what the customary practice is in this country as to that?

A. No, sir; I do not.

Q. Did you form any opinion or reach any conclusion as to how those tanks were made?

A. As to how they were made? Will you please make your question a little clearer?

Q. How they were shaped and put together.

A. Well I apparently—I thought as normally would be done, the tops and bottoms were pressed, that the side was rolled, that the three parts were afterwards brought together, and riveted.

Q. Did you consider that they were stock tanks, or specially built tanks? Did you see any evidence that led you to either conclusion?

A. No, sir.

Q. You don't express any opinion as to whether they were stock tanks or specially made tanks?

A. No, sir; none whatsoever.

Q. Do you know how the rivet holes are made in stock tanks, in this country?

A. I should think the practice varies.

Q. Do you know?

A. I don't know; I should think the practice varies.

Q. Now Mr. Thompson, in your opinion are those rivets properly spaced in the bottom of these tanks?

A. Distance from center to center—I should imagine they were correctly spaced. I saw nothing otherwise, of the few I could see.

Q. Assuming that all the rivets were spaced that distance, corresponding to those which you saw—which is a fair assumption, isn't it?

A. I should imagine so; but I am not going to give evidence of what I haven't seen. As an assumption I would say, yes; but otherwise I don't know.

Q. Those which you saw were properly spaced?

A. From center to center they seemed to be of the normal watertight pitch, four diameters; I judge them to be spaced four diameters apart.

Q. Just how would double riveting add to the tightness of those tanks?

A. Considerably.

Q. Just how?

A. The same way in which a double-sewn seam of a sail is a better seam than a single seam. I think that will apply to almost any two things brought together.

Q. Is that your best explanation?

A. Different cases—I think it is the nearest for the purposes of the Court, Mr. Underwood.

Q. Now I want to get this clear on the record, Mr. Thompson. You draw a parallel between a double sewn seam in a sail, and double riveting in the bottom of tanks. Is that your best reason why these tanks should have been double riveted at the bottom?

A. I think they would be tighter if double.

Q. Just why?

A. I think you get a better job, for the reason that standard practice—we want to make a particularly tight job, that where we have any danger of any kind from seepage or leakage, we naturally, from our experience, find a double riveted seam far better than a single riveted seam.

Q. Now Mr. Thompson, you haven't yet answered my question. I am dealing with the construction of the thing; the mechanics of the thing. Just how does an extra row of rivets around the bottom make the joint tighter?

A. For the reasons I have given you.

Q. Those are the best you have?

A. They are the best I can recall at the moment.

Q. You have been thinking about this thing for some time, haven't you?—the Seminole and her tanks?

A. No, sir; I haven't given it all the thoughts in detail as you are trying to get now.

Q. You have been in Court for ten days?



A. Yes, sir. I haven't been thinking about that seam, though.

Q. You have been consulting with counsel?

A. I don't know if you could describe it as that. I haven't consulted with counsel as to my own evidence whatsoever; I never do; Mr. Underwood. I say that publicly, in the presence of counsel who have had me on other cases.

Q. If you were building these tanks, I want you to tell me just exactly what you would do, and everything you would do, from the time you put the bottom crown into the cylinder of the tank, until you finished the riveting job.

A. I would rivet them and caulk them.

Q. I want a little more detail than that.

A. But that is the complete thing I would do.

Q. What would you do first?

A. Counsel asked me a question and I have answered it fully: I would rivet them and caulk them.

Q. Just how would you start to rivet them?

A. I wouldn't do it personally; I would instruct men to do it.

Q. How would you instruct the men to do it?—if you wanted them to do it in the best way you know about?

A. I am afraid I can't answer that kind of question, in any other than that in which I have.

Q. Where would you put the cylinder of the tank, to begin a riveting operation?

A. Where would I put it?

Q. Yes; would you put it on a work bench, or hang it from a crane, or where would you put it?

A. Well sir, I think there is no special way to put it.

Q. Where would you put it?

A. I wouldn't put it anywhere; I have never riveted a tank. I would never give instructions; the men I have been used to needed no instructions on that point whatsoever.

Q. Well now Mr. Thompson, I need instruction on that point, and I am asking you for it, and I would like you to tell me; start from the beginning. What is the first operation that you would have your men do, to put that crown in the bottom of the tank?

A. I give no instructions whatsoever, sir.

Q. Suppose you had a green man who didn't know much about riveting, and needed instruction as I do, on how to do this; what would you have him to do first?

A. I am afraid you would have me completely puzzled; I wouldn't attempt to instruct him. If you are green as you make out now, I would not attempt to instruct you as to how to do the job.

Q. How would you hold the crown in place, when you drove the first rivet?

A. First of all the crown would be bolted in place.

Q. And which row of rivets would you drive first, the top row or bottom row? Or would you drive some in one row and some in another?

A. A careful tank riveter would see that his joint was fairly good before he started riveting. Different men have different methods. All we ask—

Q. I want to know what you would do, Mr. Thompson.

A. I wouldn't do anything, because I don't do such work.

Q. Do you know how to instruct a man to rivet a tank?

A. I have never had occasion to instruct a man.

Q. Do you know how?

A. I think I would.

Q. Well, tell me how.

A. But you are so green I can't tell you, Mr. Underwood.

Q. Perhaps the Court will understand; don't worry about me.

A. I can answer no more than this: and it is a repetition of what I have already said. That inverted crown plate would be bolted to the shell of the tank; it would be seen it was a properly fitted job before they commenced riveting. The riveting then would go on, and the job would be finished and the tank caulked. Beyond that I don't know how—I would have to go out to a long explanation, make speeches and have models, and I am afraid I wouldn't be able to show you then, Mr. Underwood.

Q. Perhaps you can answer this simple question. Which row of rivets would you drive first, the higher or the lower?

A. If you are instructed it is advisable to rivet one complete row of rivets and then the other, you have been wrongly instructed.

Q. I am asking you, Mr. Thompson, and I would appreciate an answer.

A. I do not, neither.

Q. Which would you do? Would you rivet some of one row, and then some of another, all the way around the tank?

A. They are riveted one after the other; they are not done all at the same time.

Q. Would you just do one in one row and then one in the other row, or would you complete one row before starting the other?

A. No, most decidedly I wouldn't complete one row; no good workman would.

Q. Then you would do your caulking after you had both rows of rivets driven, is that right?

A. I should imagine so, Mr. Underwood.

Q. So that there wouldn't be any caulking between the two rows of rivets; is that right? May I have an answer?

A. It would be, no, sir.

Q. Isn't it caulking that keeps the tank from leaking?

A. A tank of that description should be caulked, and the caulking will take care of any seepage that passes the rivets. We build tanks with caulking, at times, Mr. Underwood; in other words, the riveting keeps the tank tight.

Q. Sometimes the riveting keeps the tanks right, does it?

A. Yes, sir.

Q. Gasoline?

A. No, sir; oh no, no. I said, tanks. We are talking about tanks in general, not gasoline tanks, Mr. Underwood; that's my understanding of your questions.

Q. Do you want to make any changes in your testimony in answer to my questions, if I ask you to assume that we are talking about tanks like those in the Seminole?

A. In what regard?

Q. In any regard.

A. Well I can't remember all the questions.

Q. Do you say you didn't realize that I was asking you about the Seminole tanks, or tanks similar to those?

A. No, I thought your questions were in regard to tanks in general, frankly.

Q. Isn't it a fact, Mr. Thompson, that those gasoline tanks on the Seminole could without a great deal of difficulty have been subjected to a hydrostatic test?

A. I doubt it; whether you qualify it—without a great deal of difficulty. I should imagine it would cause a lot of trouble, to put them separately under hydrostatic test, to eight feet above the top of the tank.

Q. Just what sort of a tank is it that the rules require to be tested with a head of eight feet?

A. The rules? What rules?

Q. Any rules.

A. Oh I am afraid to answer such a question; as to any rules, any one set?

Q. Any rules that you know of.

A. To the best of my belief, Lloyd's would ask a height of eight feet above the head of the tank.

Q. Gas tanks?

A. That is my—the best of my recollection; yes, sir. If you would show me the rules I would turn to them. (Book handed to witness by counsel). Oil fuel—that of course is not gasoline; oil fuel, there is a difference. I think it is in this book, I don't think it is in that book, if I remember right.

Q. All right, you may look anywhere you like.

A. Have you the proper Lloyd's rules—the whole rules?

Q. I have those that are in evidence.

A. These are just yachts; the other book is the one I am most acquainted with, the large book of rules. Have you that? Yes, that is it; sorry to have taken so long. (Book handed to the witness by Mr. Matteson.)

Q. Perhaps in order to save time we will let you look it up.

A. Yes; it is eight feet; I think, Mr. Underwood.

Mr. Botts:

Let me have that, and while I am sitting here I will see if I can find it.

A. The rules are rather extensive.

Mr. Matteson:

I have it here in this one.

A. Mr. Underwood,—Testing; it says here, Tanks are to be tested by head of water six feet above the crown of the tank; that is double bottom with fuel oil, deep tank.

Q. That is not a gasoline tank, is it?

A. I imagine that is not a gasoline tank. I think gasoline tanks are to be eight feet; I think I can turn that up



later, your Honor. It says, six feet, there, for a double bottom.

Mr. Jones:

I will look further.

A. Yes, I think it is eight feet.

Q. Could these tanks be subjected to an air pressure test?

A. I wouldn't approve of it; I prefer a hydrostatic test. They could be, yes, with efficient closing of all openings; oh yes.

Q. Do you know how the motors on the Seminole were started?

A. I didn't know the Seminole before—before the fire; but I believe they were started by air.

Q. You have told us that in your opinion the tank compartment was not suitable because there wasn't room for a man to go in and look at the tanks; is that right?

A. To examine and repair.

Q. To examine—

A. And repair; examine the tanks efficiently, and repair them if necessary; but particularly to examine them.

Q. There isn't any question of repair here.

A. Well, we will say, examine; we will just let it go at examination.

Q. Could a man adequately test those tanks by going into the compartment wherein he had ample room to go all around them, on top of them and below them, and test them?

A. I said, examination; not for testing.

Q. Could he adequately examine them?

A. If he could get all around them?

Q. Yes.

A. Externally?

Q. Externally.

A. He could adequately examine them externally.

Q. Would you be satisfied with such an external examination, to determine whether or not tanks were leaking or seeping?

A. No, sir; I would want an internal test; a hydrostatic test, periodically, as well; all good practice calls for it.

Q. The purpose that you have in mind is to determine the condition of the tanks?

A. The condition—to determine whether they are in a state—whether they are proper tanks for the carrying of gasoline in bulk.

Q. That means whether they leak, or are about ready to leak? Is that right?

A. I wouldn't say, about to leak. I don't understand that term.

Q. Do you mean, whether they leak or not?

A. Well, whether they are gas tight; I would rather leave it that way.

Q. By gas tight, do you mean tight for gasoline?

A. Tight for gasoline, if you prefer it that way.

Q. It is because you say that that couldn't be done, that you say this tank compartment was bad in that respect; is that right?

A. I say the installation was bad in that respect.

Mr. Botts:

May I just call the witness' attention—I don't know whether this is the point they were looking for, or not.

A. Fuel tanks; but there is one I think on gasoline tank; this says fifteen feet of head.

Mr. Botts:

This is for internal—

A. That is for fuel oil, not gasoline. For fuel oil they ask fifteen feet head, your Honor—the reference Mr. Botts has just shown me.

Q. Now were these tanks supported on the bottoms, so far as you could tell from your examination of them?

A. Well at the time I saw them, I would rather not go on record as to their supports; I didn't see much of that, Mr. Underwood; I only saw them after the fire.

Q. Did you put your head in that little square hole and look up,—the square hole in the forward bulkhead?

A. I don't recall whether I did or not, now. I was rather perturbed that day; you had given me an instruction I had never received before in my life from any one; and I wish to emphasize it, too. I was called all the way down from New York to make a special survey; I rushed down here at—I wouldn't say great expense, but I went to extraordinary trouble to get down here on that particular day. I came for a survey, and I am immediately stopped in my survey; and I wish to register a protest, a strong protest, now. In the whole of my career of thirty or forty years it has never been done before. I register that frankly and fully.

Q. Do you have anything more to say on that subject?

A. No, sir. You mentioned it with me now, sir, and I just tell you exactly how I felt at the time.

Q. Just what do you say I told you you could or could not do?

A. You told me definitely that I was not to move anything; and you told Capt. Patten he wasn't to touch certain things. I don't know how it could be possible to be a survey, in any circumstances.

Q. What did I tell Capt. Patten he couldn't touch?

A. I believe now, speaking from memory, I believe he was getting hold of a pipe or a fitting, and you told him not to touch that.

Q. Which pipe? Which fitting?

A. I was not taking notes at the time; I was going on with my own survey as far as I could. My survey was not with Capt. Patten; I was making an independent survey.

I have not conferred with Capt. Patten as to the evidence I should give in this case.

Q. Who else was present, at the time of this survey?

A. Quite a number of people. Mr. Dyer was present; you were present; Capt. Patten, one or two others, but I don't know that I know their names.

Q. Did Mr. Dyer make any protest?

A. He did not, as far as I can recall; I didn't hear one, now.

Q. Have you read the terms of the Order of the Court?

A. No, sir.

Q. —which permitted that examination?

A. I have not. I have given the whole of the facts as far as I know them.

Q. Is that the reason you didn't put your head through the square hole and look up at the bottoms of the tanks?

A. I have said, sir, I don't know whether I did put my head in. I have said my survey was restricted, and I did not go to the same trouble as I usually do.

Q. Did I tell you you couldn't go into the compartment under the tanks?

A. I could observe, but I couldn't go into that compartment.

Q. Did I tell you you could not?

A. No, sir; I have said as far as what you said; I do not state you said anything more than that, but that was sufficient for me, as a professional man.

Q. From your observation, what was under those tanks?

A. As far as I can recall now, sir, there were longitudinal angles with foundation plates; that is all I can recall, and I think I stated that in reply to Mr. Matteson.

Q. Did you see any drip pans under those tanks?

A. I did not see any drip pans.

Q. Did you see any pans of any kind under those tanks?

A. I did not.

Q. Did you see any steel or metal plate of any kind under those tanks?

A. I have just said I think I recall foundation plates.

Q. By foundation plates, do you mean one that is coterminous with the compartment itself?

A. I say it is part of a seating; it may be continuous, it may be just in pieces.

Q. Are you sure there weren't any trays under those tanks?

A. I saw none, sir; I saw no evidence of any whatsoever.

Q. Have you ever been on a vessel of the size of the Seminole, which was driven by motors such as she had?

A. Identical dimensions?

Q. Approximately.

A. Approximately? Several times, yes.

Q. What is this sixteen to one theory of proportion as relates to vibration, that you were telling us about yesterday? I don't understand it, and I would like to have you tell me.

A. I hope I didn't mislead you. There is no such theory as a sixteen to one theory. What I stated, I believe from recollection, that I thought that her depth to length was so great that she would be apt, in my opinion, to vibrate unduly. I believe that was the substance of my evidence, your Honor.

Q. You mean that the proportion, she was so deep in proportion to her length, that she would be likely to vibrate unduly; is that a fair way to put it?

A. Just the reverse, I should say.

Q. She was so long in proportion to her—

A. Depth.

Q. Is that right?



A. That is right; and she had very few cross members, I believe I added. And I think an additional reason was, she was flat bottomed—sort of flat of bottom; I am just speaking from recollection, naturally. But those are the three things I stated, I believe.

Q. What kind of vibration do you have in mind? Vibration in a seaway, or vibration from her propelling plant?

A. Both, I should say; both. I think I stated, both. I intended to.

Q. Well, let's take those up one at a time. Do you think that in a seaway, due to this characteristic of hers, she would hog or sag on the waves?

A. Unless you break her back, Mr. Underwood.

Q. Is that what you mean?

A. No; I said, in my opinion and from my experience, particularly as I have specialized for many years in the design of shallow draft vessels, with that proportion, and even worse proportions I, speaking from experience, know that that type of boat is apt to vibrate more than boats having greater depth in proportion.

Q. By vibration, now, we are talking about vibration in a seaway; I am leaving out for the moment any vibration that might result from the operation of her machinery. Did she have an expansion plate?

A. Certainly not.

Q. Or, expansion joint?

A. I hope not. I thought she was bad enough, but I didn't think she would be as bad as to have that.

Q. Will you tell us what an expansion joint is for?

A. Expansion joint? To overcome difficulties set up by varying temperatures; the same as you have in bridges.

Q. Is that the only purpose of an expansion joint?

A. In my experience it is, sir; that is in a ship, at least, Mr. Underwood. I want that record to be right as far as my evidence is concerned; and that refers to a ship—the construction of a ship.

Q. Now let's go to this—no, let's not go yet. What effect do you say that her vibration in a seaway would have on her gasoline tanks and lines?

A. I think that vibration would be, as I think I have already said, apt to loosen the joints, the pipes.

Q. You think she would vibrate throughout her whole length, in a seaway?

A. Unduly so.

Q. What was the distance from the tanks to the carburetors, approximately?

A. I don't know that I actually saw the carburetors, Mr. Underwood; and I don't want to be caught. Please don't think I think you are intending to catch me, because I don't think you are. But I want to be—

Q. Assume that they were on the after end of the engines.

A. Well any part of the engines—speaking from memory, I didn't note it then, but just bringing back that wreck to my mind now; you mean from the after bulkhead of the tank space, to approximately, perhaps the end—the after end, or middle part—

Q. Of the motors?

A. This is a guess, Mr. Underwood.

Q. Well, make your best estimate. You are an experienced man, now?

A. Yes, but I didn't apply that experience to that particular point, please remember.

Q. Didn't you observe the engine room?

A. I observed the engine room.

Q. What is your best estimate of the distance from the after end of the motors to the forward bulkhead?

A. As an estimate now, not having considered the point either at the time or since, only when you asked me to, I should say the distance from the after bulkhead of that tank space to the section of the engine which was probably the position of the carburetor would be, probably eight to nine feet; ten feet perhaps.

Q. Do you say that vibration of a ship in a seaway would cause any material derangement of such a gasoline line in that space?

A. Emphatically; emphatically.

Q. Do you have any means of knowing how much vibration, if any, was set up by the operation of her machinery when she was under way?

A. I have no experience with that boat, Mr. Underwood, at all; of anything—I don't know; I have no evidence she was ever under way, myself.

Q. You have told us all you want—strike that much, please. You have told us about the two kinds of vibration that you think might affect her gasoline system, have you?

A. I am quite certain I did, Mr. Underwood; not just a matter of thinking; I am quite certain that if that boat was under commission for any length of time, that vibration would affect her.

Q. Just where?

A. At practically every joint, unless it had at that particular spot an expansion—what I call an expansion coil or curve; that was the evidence I intended to give yesterday.

Q. Let's look at Exhibit 2; do you say that leaked?

A. I don't know; I couldn't tell you.

Q. Speak out, Mr. Thompson; I want to get every word you utter.

A. I don't know whether that leaked or not; I couldn't say whether it leaked. I don't know where it came from, even.

Q. Assume that it came from the Seminole, and was in use prior to the fire; did it leak?

A. I should say it would leak, yes.

Q. Where? Where did it leak?

A. That condition is changed; at any one or more of the joints.

Q. Just where?

A. At any one or more.

Q. I want to know whether your testimony is that that piece of material from the Seminole, leaked.

A. I don't know. How can I possibly know that, Mr. Underwood? I just expressed by opinion that it would leak at any one or more of those joints. I never have seen such an awful contraption before in my experience.

Q. Let's look at Exhibit 17. Do you say that that piece leaked?

A. I don't know, sir. I don't know it was on board, even.

Q. Assume it was on board the Seminole; did it leak?

A. I think it should, would, leak; but I don't know whether it did.

Q. Where?

A. At any one or more of the joints; and at the petcock, if there was a petcock, at the bottom of that.

Q. Are you willing to express the opinion that a petcock, of the existence of which you are not sure, leaked?

A. A hypothetical case— say, any petcock—

Q. I understood you to say that if there was a petcock there, it leaked; is that right?

A. In my experience, it would leak; any petcock, in that position.

Q. Did this petcock leak?

A. I don't know, sir. I don't know it was on board.

Q. Can you say that any particular joint in that piece, Exhibit 17, leaked?

A. I do not know, sir.

Q. Now I show you two drain valves, Exhibit 11: did they leak?

A. Am I am speaking too loud for you?

Q. Do as you like.—Did they leak?

A. I don't know. I don't know that they were on board.

Q. Assume that they were on board: did they leak?

A. I couldn't say, sir.

Q. Now you have said, I think, that you wouldn't approve a petcock in the bottom of a strainer, and that you would prefer—

A. A ground plug.

Q. A ground plug. Draw me the sort of a thing that you say would be a proper fitting at that point.

A. A very rough thing.

Q. Mr. Thompson, you are very smooth; now you do a smooth job on this.

Mr. Matteson:

I object to such statements on the record. We move to strike that.

The Court:

The motion is granted; strike that out.

Mr. Botts:

I think it might be well to suggest that counsel could be a little more courteous to the witness. There is no use, because the witness is testifying in a way he doesn't like, for him to be as discourteous as he is.

Mr. Underwood:

If I have been discourteous, I apologize.

A. I understood you said the witness could take care of himself; and if at any time I have appeared to show any heat, it is purely because I think you have aggravated me; and I did not mean it personally, Mr. Underwood.

Q. All right; go ahead, now.

A. I am just going to give the thing diagrammatically, if I may, just applying to the part you have asked for.



Q. I have asked you to draw the kind of a fitting that you would approve. You may draw it in any—in your own way.

A. This is a very rough thing. That is the plug.

Q. Won't you mark it, please?

A. Yes, I will mark it. These are the ground surfaces; I have marked it to make it clearer for you.

Q. Now this—

A. That is the body of the strainer.

Q. Would you continue the line up on this side and mark it Strainer?

A. Well, I am not designing a strainer; I am just showing a sketch of the part you have asked me to.

Q. Just mark the strainer. Will you mark this side, the Strainer, please.

A. I will call that Strainer.

Q. Now the plug is composed of these three pieces; is that right?

A. I am afraid—that is a screw plug with a hexagon head on it; your experts will tell you, that is a rough sketch of a plug—a screw plug.

Q. These three surfaces here are the three of the hexagonal surfaces of the head?

A. That is right. Maybe I am to blame; that should probably be a little wider there; there are on an angle; that is probably near the proportion; that is not to scale, just intended to be a rough sketch; doesn't indicate as well as a good drawing.

Q. Surfaces marked with the red arrow are the ground surfaces?

A. Where the ground surfaces are, on the plug and also on the fitting.

The Court:

Now would that plug be inserted in the strainer?

A. Screwed in, sir, and fastened up with a heavy wrench—metal to metal.

Q. May I have that marked, please?

A. Mr. Underwood, I show a metal joint there; the only joint I would pass, myself.

(Said sketch was marked respondents' Exhibit Q for identification.)

Q. You would install this and set it up with a wrench?

A. I wouldn't; I would approve it being done that way.

Q. And in operation, that would be removed daily, I suppose, to draw off the water from the strainer, or any other thing that might be in there?

A. No; I think I would change my gas supply if I had to draw that off every day, to drain water; I would go to a new gas supply.

Q. It is a thing that has to be used frequently in operation, is it not?

A. Intermittently, according to the quality of the gas you buy, where you can't get inside to clean them, you may have to take that plug off more frequently than if you had proper tanks where you could get inside to clean them.

Q. I notice that you didn't draw a taper angle on the plug.

A. I made no attempt; and I would think nothing about a taper angle in there.

Q. Flat surface?

A. Flat surface.

Q. For gasoline?

A. Well you know, Mr. Underwood—

Q. Is that right?

A. That's right; and I can give you something I think probably would help you—

Q. I don't need help at the moment, thank you, Mr. Thompson. Did you say that the Seminole should have had a stop valve on either side of this strainer?

A. Should have had sufficient means for closing the inlet to the strainer, and the outlet, so as the strainer could

be taken away with perfect safety on the closing of those two valves or cocks.

Q. And that is the purpose?

A. That is the purpose for those two; yes; safety purposes.

Q. Could that purpose be accomplished by shutting off the gasoline supply at the tanks?

A. Depends upon the nature—of course of you could shut off the supply, the only difficulty then, Mr. Underwood, you still have the distance from that strainer to the valve on the tank, to account for. You would have ascertained length of pipe highly objectionable, to remove the pipe and for the gasoline in that length to fall into the pipes. So undoubtedly the better practice—the only good practice is to have that valve tight up against that strainer; a valve each side. It could be done otherwise, but it would not be good practice.

Q. When you drain such a strainer, what do you do? Put a bucket under it to catch whatever comes out?

A. Well, sir, do you mean, what would a cautious engineer do?

Q. Yes, what would a careful man do? What would you have done?

A. Well, I don't want to throw boquets at myself, Mr. Underwood, but I would do as a normally cautious person.

Q. First you shut the valves?

A. I would shut the valves.

Q. Then what would you do?

A. Then I would remove the strainer.

Q. What would you catch the liquid in?

A. I would not clean it in the engine space at all; neither would a cautious person.

Q. Would you put a bucket under it?

A. No, sir; just carry it to a place where there was no danger of leakage from that in the engine room; I would have that cleaned outside of the closed engine room, not inside. I have a very great respect for gasoline.

Q. What purpose does the valve between the strainer and the carburetor, serve?

A. The one at the Carburetor?

Q. No, the valve. You said you would have a valve at either side of the strainer, as I understand your testimony?

A. Yes.

Q. What purpose does the one between the strainer and the carburetor, serve?

A. Well, it is just a lockage of that pipe for gas in that flowing back in the bilge; I want to prevent that danger.

Q. Of course in the event of gravity feed, the pipe from the strainer to the carburetor, would normally run down and away from the strainer, wouldn't it?

A. Yes, sir; but I wouldn't want to have to test to see where that pipe ran all that extra length. I would be satisfied, and I think the only good practice is to be quite sure, normally sure—and every reasonable person should be that on a gasoline boat,—is to see I had a valve immediately attached to that strainer on either side.

Q. You would take the risk of the extra fittings in order to achieve that end?

A. I certainly should.

Q. You have used the expression yesterday, corrosion fatigue, Mr. Thompson. Tell me what you mean by that.

A. Yes, sir. Until recent years, engineers—we were all of the impression fatigue was one thing only. But in recent years we have discovered that there are two forms of fatigue; one is ordinary fatigue, which is crystallization—some people call it crystallization. The other is fatigue that could be set up very quickly by a crack on the periphery of any material coming under concentrated stress, opening up slightly, and the fatigue in the form of corrosion striking rapidly down through it; and you will find in corrosion fatigue that the severed surfaces show definite evidence of rust as well as fatigue.

The Court:

How do you spell that, fatigue?

A. F-a-t-i-g-u-e sir. That arises generally from the same thing as a human body, sir; a failure to rest a thing regularly.

Q. What distinction do you draw between corrosion fatigue and fatigue from continuous application and removal of stresses?

A. Well I think ordinary fatigue is a slow process, that may not cause any ill effect for quite a long time. But we have found from experience—this is not an opinion, Mr. Underwood, I am speaking now from what has been ascertained; it is ascertained that corrosion fatigue can be set up in a matter of hours. I don't know that you can find that in the normal textbook; I have articles in the Proceedings of the Institute of Mechanical Engineers, London, dealing with that subject, in the past five years or so.

Q. Is the expression a common one,—corrosion fatigue?

A. Common to who?

Q. Engineers; metallurgists.

A. Oh, to metallurgists, they all know.

Q. Metallurgists all know, shouldn't they?

A. They all know it, I would say, definitely.

Q. I don't quite understand you yet. What do you say is the operating cause of this thing which you call corrosion fatigue? Is it an application of physical stresses, and the removal of those stresses?

A. I think it is. It will vary, on different occasions, in different phases.

Q. That is the characteristic cause?

A. The general characteristic—may I speak that way,—generally; if you will be good enough to add the word, general, I think I can give it to you.

Q. You may explain in your own words.

A. The general characteristic is that it is found to operate at a point where there is concentration of stress,



with a crack, perhaps unobservable to the eye at the time,—a surface crack.

Q. Does the fatigue cause the crack?

A. No, sir; I say, the concentration of stress prior to this crack being there.

Q. Do you mean to say—

A. It may be a flow; it may be a change in the composition of the material at that particular spot; there are so many reasons. I don't want to burden the Court unduly, so I will explain it simply; it commences—the premise, you have to have concentration of stress, that causing a crack in the surface; ~~very~~ slight crack. And then that, under continued concentration of stress, aggravated by the fact that you have lowered your sectional area at that point, that crack opens and fatigue strikes down, almost in a vertical line. Now I have had that experience in shops; I have had it in large Diesel engines; I have had quite a lot of experience in the last four or five years with that; and when I originally gave to underwriters and owner my opinion as to the cause of a disaster, a lot of engineers disagreed with me; but that is accepted now.

Q. I am just asking for your definition.

A. I defined it to the best of my limited ability.

Q. You have commented about the two draw-valves on the Seminole, Exhibit 11, and said that one reason why there should not be such things, is that somebody might tamper with them; do you remember that?

A. I thought I objected to the whole thing; not so much the way it was fitted up. I object to a draw-off altogether.

Q. And one of the reasons you gave, is that some one might tamper with it; is that right?

A. No, sir; not even that. I object to the whole thing. I would not pass any drain of any description in an engine room, or any other confined space where gasoline was stored or used.

Q. Then one of the reasons you have for that view, is that somebody might tamper with it and permit gasoline to get out of it; is that right?

A. The principal reason—

Q. That is right?

A. No, sir.

Q. That is not one of your reasons?

A. That may be one of the reasons for the valves, but that is not the reason for the valve itself—my objection to—

Q. Did you or did you not give as one of your reasons why there should not be such a thing, the fact that somebody might tamper with it?

A. No; I don't think that would be a fair interpretation of my evidence, whatsoever.

Q. You didn't say that?

A. No. Please try to interpret my evidence so as I can answer you properly. I will go through—

Q. Did you give as one of your reasons why there should not be such a thing, the thought that some one might use it negligently?

A. Not in a dangerous place; outside of a dangerous place. A hypothetical case I understood was put up for the use of valves. I object primarily to the whole thing.

Q. The basis of your objection as I understand it, is that in the process of getting gasoline out in the confined space, there may be vapor; is that right?

A. That is one of the reasons.

Q. Of course if no gasoline ever comes out of it, it doesn't do any harm, does it?

A. No, sir.

Q. Have you ever experienced a leak in a carburetor, due to getting grit in the valve?

A. Oh, I frequently have seen carburetors leaking, Mr. Underwood.

Q. Due to grit under the valve seat?

A. Possibly at times, yes.

Q. But you don't condemn the existence of carburetors in the engine space, do you?

A. No; no, sir.

Q. In other words, Mr. Thompson, there are some things that are necessary to the operation of a gasoline driven plant, aren't there?

A. Yes, sir, oh yes.

Q. There are some risks we have to take, aren't there?

A. Yes, sir; and we don't want to increase them, or to have unnecessary ones.

(Brief informal recess was had.)

Q. You spoke of a glass gauge, Mr. Thompson. Is it a fact that your reason for not wishing to approve such an object, is that it might be broken, or that it might leak?

A. That's right, sir.

Mr. Botts:

I didn't hear the answer.

A. That is right, sir.

Q. You observed, I think you said, that the valves to the gasoline tanks were at such point that all the gasoline could not be drained off from the tanks through those valves; is that right?

A. Yes, sir.

Q. And what did you say you would do to remedy that?

A. To remedy it?

Q. Yes.

A. On those tanks?

Q. Yes; did you say that you would have a plug in the bottom?

A. Not of that tank, no; a plug in the bottom of that tank would be no use at all.

Q. Did you say that you would have a tank with a flat bottom or a bottom concave, and a plug in the bottom of that?

A. I said that in some circumstances would be allowable; but I wouldn't say that I would care to have it fitted in that way in any case, myself.

Q. Well, do you approve of some device in the system of a tank so that all the gasoline can be drained off?

A. No, sir; I would not approve of that device.

Q. Would you disapprove of one if it were there?

A. Not where the tanks were fitted in a position where leaks might cause collection of dangerous gases.

Q. Did I understand you to say yesterday that a ground plug would be the proper kind of a plug in the bottom of a gasoline tank, if you had a plug?

A. A ground plug in the bottom of a gasoline tank, and the gasoline tank fitted where a leak from that plug would not create a dangerous hazard.

Q. The same kind of a plug that you have drawn on Exhibit Q?

A. Well, sir, it would have to be fitted into a double plate, and that is just a rough indication:

Q. But the same kind of a plug?

A. Not as to size or length of that plug; just roughly indicates it.

Q. Shall we say, the same type?

A. Somewhat the same.

Q. A ground surface?

A. Yes; a ground surface.

Q. With no washer of any sort? Metal to metal?

A. I prefer metal to metal; that is my own personal experience, it is much preferable to any joining material.

Q. Have you ever seen such a plug;—a ground surface plug?

A. Oh yes, sir; had it made. I haven't made them myself, but I have ordered their manufacture or purchase.

Q. Would you do anything else besides provide for a ground plug in the bottom of a gasoline tank?

A. What purpose, Mr. Underwood?

Q. To close up the bottom of the tank.

A. I am afraid I don't recall the question.

Q. If you were fitting a gasoline tank in a compartment that was so arranged that there could not be any accumulation of gasoline vapors, and you were preparing specifications for a plug in the bottoms of those tanks, what would you specify?

A. I don't know at the moment, because I have never—I can't recall having fitted a plug in the bottom of a tank.

Q. You mean that is a subject that you have never contemplated, and are not prepared to answer at the moment?

A. Substantially, yes.

Q. Do you know of any rules published by anybody for the lay-out of vessels that are propelled by gasoline power?

A. I can't recall any at the moment, Mr. Underwood. Rules—there may be rules, I can't just recall any.

Q. Have you ever been present when a fire or explosion occurred on board a vessel propelled by gasoline, at the time of the origin of the fire or explosion?

A. Not a serious one; if I can recall aright, I think I have been on board a gasoline vessel in a small fire, but I am not certain as to that, even, Mr. Underwood.

Q. You said yesterday that explosions have occurred in cases where gasoline vapor was not noticed prior to the time of the explosion?

A. Yes, sir.

Q. Do you base that statement upon what other people have told you?

A. Yes, sir.

Q. You have said that a certain hazard still remains when one has done all that is humanly possible to avoid it, is that right?



A. Humanly possible—normally possible, walking around an engine room and examining the condition of things, that's what I meant.

Q. Shall we say, all that is reasonably possible?

A. All that is reasonably possible, that a normal man would do—A man with any intelligence, would do.

Q. Do you say that the gasoline tanks of the Seminole leaked prior to the fire?

A. I don't know, sir; I wasn't present.

Mr. Underwood:

That's all; thank you.

#### Re-Direct Examination.

By Mr. Matteson:

Q. Mr. Thompson, in the course of your testimony, you indicated that you would like to refer to a book that I have in my possession, which I hold in my hand, but you were not permitted at that time. Will you tell me what this book is?

A. That book is a book that was prepared for me by some of the staff of my office in Westminster, London. I believe in the year of 1917, and presented to me at Christmas time of that year. It contains, I believe, photographs and descriptions of a few of the vessels built in one of the wards, during the war, for war purposes; or vessels that were turned into vessels for war purposes; that is, purposes connected with the war; some would be for hospital work.

Q. What did you have to do with the construction of these vessels?

A. Those particular vessels?

Q. Yes.

A. Well, I supervised the construction of the whole of them; I don't know, I think most of them were—a lot of

them were designed by the Government, but I superintended the construction, I can say that, of the whole of them. I supervised the design—by that I mean from the time I was about twenty-seven years old, I didn't actually work at the drawing bench; I supervised designs. I supervised the design of several of them, I don't know how many; I haven't considered that point. Those all refer to one yard, and a certain number of boats only in that period. I think it states that on the inside cover.

Mr. Matteson:

I offer this book in evidence, if your Honor please.

The Court:

Objection?

Mr. Underwood:

May I see it?. If your Honor please, I won't take time to examine this thoroughly now; I probably sha'n't object to it, but may I reserve my objection?

The Court:

Yes.

(Said book was received in evidence and marked Libellants' Exhibit No. 102.)

The Court:

To keep the record straight, let it be admitted in evidence subject to motion to strike.

Q. I take it this book shows photographs of the types of vessels, and on the opposite page the description relates to those photographs; is that right?

A. I believe that is so, sir. I did not know that book existed until I was informed of it last night; I thought it had gone, years ago.

Q. Does that book represent all of the boats—

A. I would like to correct that: I thought it had gone years ago, until we removed down to Miami this winter, and it turned up in the course of moving; I told my wife to throw it away, destroy it, but I found last night it hadn't been thrown away.

Q. Do the pictures and descriptions in that book represent all of the boats that were built in that yard under your supervision, or not?

A. Oh, by no means; just a few. I think actually it states so in the book.

The Court:

Mr. Thompson, who is M. Vince?

A. M. Vince was my private secretary, sir.

The Court:

Who is W. T. Brown?

A. He was my chief draughtsman.

The Court:

Who is James Clayton?

A. He was one of my assistant draughtsmen, at the time, sir.

The Court:

What connection did you have with the Saltney Shipyard Chester?

A. I was one of the managing directors, and I had a fairly considerable financial interest in it.

The Court:

All right.

A. That yard has been referred to in evidence, sir.

Q. I am looking for the drawing that Mr. Thompson made yesterday; are they supposed to be here?—the

tanks?—Mr. Thompson, yesterday you made this drawing, which was marked Respondents' Exhibit P for identification, showing a partial section of a tank, where the bottom is convex instead of concave, as you described it, on the Seminole. You were asked about the effect of condensation in a tank so constructed. Will you tell us what difference if any there would be between the action of condensation in a tank so constructed, and in a tank constructed as you have indicated in Libelants' Exhibit 99.

A. The difference in the effect of condensation, is that it?

Q. Yes.

A. Well, in my opinion, the condensation is very much less apt to get down at the joint—that is the joint here—that is between the cover and the shell; in my opinion most of the condensation would be caught on the top and would fall down or into the bottom, rather. In the other type—

Q. Referring to—

A. That one with the convex bottom.

Q. Respondents' Exhibit P?

A. Yes.

Mr. Underwood:

Why not write Convex in one, and Concave in the other, so as to keep it straight. Would you object to that?

Mr. Matteson:

No.

A. Put Convex—that is not a very good description; convex type of bottom?

Mr. Underwood:

Just Convex is enough; Concave on the other.

Q. I would like to have you mark on that exhibit—use this to write on—the point at which you say the condensation would be caught.

A. It would be caught—shall I mark that?

Q. Yes, mark it with an arrow.

A. It would be caught—originally?

Q. Yes.

A. Caught originally at Mark A, or One—?

Q. Mark A; letter A. And then where do you say it would go from there?

A. I think the most if not all of the condensation caught at point A, would flow over the horizontal plate, which is only about one quarter of an inch thick; it is not so thick as I show in this sketch; and flow over the edge—B?

Q. Yes.

A. And from that edge by gravity, fall down into the bottom, towards the bottom, which I mark—C?

Q. That is right. Now you have drawn a light line here which I take it indicates the direction of the flow?

A. Yes. Shall I mark that clearer?

Q. Yes.

A. Might call that BC, that line.

Q. I think it is sufficiently indicated; it leads to the point C?

A. To the point C, and beyond of course.

Q. Now what advantages does one type of construction have over the other, if any?

A. Other advantages? In addition to the one I have pointed out?

Q. Yes, if any.

A. The head of the rivet is inside what should be normally a tight—the inside, which normally should be tight in a tank.

Q. You are referring now to which type?

A. That is the convex type, has the advantage.



Q. Respondents' Exhibit P.

A. In my opinion, those rivets are likely to leak less in—as shown in convex type, that they are in the concave type; due to the fact that the head of the rivet, which I now mark approximately on the sketch and designate as E?

Q. All right; the letter E points to the rivet head; is that right?

A. Yes.

Q. Explain to us then.

A. Any leak, beyond the rivet head, that is any seeps or corrosion beginning at the back of the head, is inside of the tank, not outside, as it would be on the concave type. I will now mark approximately the rivet on the concave type; we will call that—mark that as B on concave.

Q. Libelants' Exhibit 99?

A. 99. That rivet is shown there with a plain neck; I attach no importance to the type of rivet I am showing.

Q. In which type would the condensation or other sediment be more apt to attack; the rivet or the binding surfaces?

A. Is the concave type, Libelants' #99 sketch.

Q. And why is that?

A. Because the whole of it is retained at a point where it is liable to attach the rivets and the caulking at the bottom.

Q. That is with respect to the concave type?

A. Concave type.

The Court:

Would that rivet head be inside the tank—

A. On the concave type, sir.

The Court:

On the convex type?

A. On the convex type inside, on the concave type outside; then, should I mark here the inside of the tank?

The Court:

On the concave, the rivet head would be—

A. Outside; and the convex inside.

Mr. Botts:

Do I understand that on one type both the head and the point of the rivet are outside, and the other type the head is inside and the point outside: is that correct?

A. That is so.

Q. You were asked a general question as to whether stresses parallel to the axis of a cylindrical tank, or perpendicular to the axis, would exert a greater strain. Is it possible to make any answer to a question of that kind, unless further information as to the situation is given?—without further information as to the situation of the tank and its use?

A. I think further information would be necessary, Mr. Matteson.

Q. You were asked something about the standard practice for making rivet holes in tanks, in this country. Do you know anything about that?

A. As to the standard practice?

Q. Yes.

A. May I have that question read? (Question read by reporter.) No, sir.

Q. You were asked a question as to whether these drain valves, Exhibit #11, leaked; and I think your answer was shut off before you completed it. Did you have something you wanted to add to what you said?

A. The tank as I examined it—the valve as I examined it yesterday? I think in the state it is now, that that valve would definitely leak; and it is in such bad order, I do not consider the valve any longer, because I think it is worn out.

Q. And what was the condition that you referred to?

A. The condition of the valve.

Q. And by the valve you refer to the upper part of the mechanism—

A. The valve spindle.

Q. Which is attached to the valve spindle?

A. That is right, sir.

Q. You were asked a question this morning by Mr. Underwood—

A. May I amend that? Perhaps this is a little disconcerting. The whole thing is a valve; but to me as an engineer, the part of the thing which really stops the flow, makes the line tight, is the part that seats on the seat; I call that part the valve; although the whole thing is referred to as a Globe valve. The valve itself is really part of that; and I meant that that part attached to the spindle was worn out, or in such a state it would no longer be gas-tight.

Q. You were asked by Mr. Underwood whether one of the objections that you had to the presence of a valve in the engine room for the purpose of drawing off gasoline—whether one of the objections was the possible negligent use of such a valve. I am not clear whether—what your answer is on that.

A. Well I am not clear myself as to whether that was the question; I didn't understand that was the question. One of the objections—

Q. It is one of the objections.

A. Oh, yes, that is one of the objections. I thought—I misunderstood Mr. Underwood; I am sorry. That isn't my objection; that is one of my objections; I have other objections.

Q. You were asked about plugs in the bottom of tanks, for the purpose of drawing—of draining the tanks off. Are such plugs ever used, and if so, under what conditions?

A. They are frequently used—for gasoline tanks?

Q. Yes.

A. Oh, I don't think I have ever seen one in a gasoline tank. They are frequently used in tanks—ordinary tanks, water tanks, or containing other fluids with no danger of a leak. But I would not approve of a plug in the bottom of a gasoline tank; particularly if that tank fitted in a compartment where a collection of gasoline fumes may occur, I would object to a plug absolutely.

Q. I think you said that after everything had been done in the engine room, that an engineer could normally do, or would normally do, to ascertain tightness of the connections, there still remained a danger. What if any steps can or should be taken to overcome that danger?

Mr. Underwood:

If your Honor please, I object to that as a hypothetical question, without facts.

The Court:

Let me get the question again now.

(Question read by reporter.)

Mr. Matteson:

I think Mr. Underwood's question was general. I tried to put it in the same terms. I think it is general; applies to any type of gasoline vessel.

The Court:

Are you quoting his statement as applied to the Seminole, now?

(Question re-read.)

Mr. Matteson:

I am applying it to any type of a gasoline vessel. The question Mr. Underwood asked was general, with respect

to any type of a vessel. He said after everything that could normally be done in an engine room of a vessel of this type, a hazard still remains. Now I am asking what steps if any can be taken to reduce or minimize that hazard.

The Court:

I will overrule the objection.

A. Now may I have the question read again, sir?

(Question again read.)

The Court:

Now let me ask you this: does the first part of that question correctly state what you have stated? Has Mr. Matteson correctly summarized your statement?

A. I think so, in substance, I believe that is right.

The Court:

All right.

A. Before he manipulated any electrical device of any kind, or attempted to start the engine, he should see that the place was properly ventilated, either by the opening of all his ventilating devices, and also with the operating of either manually operated fans or mechanically operated fans: in other words, the place should be ventilated to the best of his ability at that time, and for a period before he commences to operate his engines. That is the normal, good, standard practice. Failure to do that, your Honor, has to my knowledge, in my experience, caused explosions, in vessels that were otherwise well fitted. But that is an essential thing, that he should have that place properly ventilated.

Q. Is the matter of ventilation in such places, emphasized in these rules of Lloyd's that you refer to?



Mr. Underwood:

If your Honor please, I object to that on two grounds. I didn't go into ventilation on cross; and the rules speak for themselves.

Mr. Matteson:

It seems to me, if your Honor please, this all hangs together. Mr. Underwood has attempted to infer by his question that there are hazards that can't be escaped; and in redirect I am bringing out how they should be escaped, and the importance of those measures and the emphasis placed on them in the rules. I simply want Mr. Thompson to tell us whether that emphasis is there or not.

Mr. Underwood:

The book speaks for itself as to that, your Honor.

The Court:

Well, the book is admitted on the theory that has been expressed by the Court, not as speaking for itself, as a document, but as corroborative evidence of his own opinion. I think he may corroborate that, under that rule; so I will overrule the objection.

Mr. Underwood:

If your Honor please, I don't mean to press it unduly, but the question is, what the book does, not what Mr. Thompson does.

Mr. Matteson:

I am simply—

The Court:

By this question it is sought to develop as to whether he is corroborated in his opinion by the book?

Q. Will you answer the question now?

A. I can't say that it does, of my own recollection now; I didn't go by rules; I go by my own experience. I have generally spoken from my own experience, rather than rules.

Q. I call your attention to—

The Court:

Hasn't he expressly excluded the book as corroborative of his own testimony on that feature?

Mr. Matteson:

He says he does not base his opinion on the books; but he hasn't excluded the corroborative evidence in the books, if your Honor please.

The Court:

I thought he said he didn't know whether it was in the book; that the book didn't mean anything to him on that point.

Mr. Matteson:

I think he means that in giving his opinion evidence he is relying on his own considerable wealth of experience and information.

The Court:

Well if he is not conscious, Mr. Matteson, of there being anything in the book on that, to which he can now refer or to which he has ever referred in formulating his opinion, I don't see how under my ruling it would be competent for him to now look at it and corroborate it now, when he is not conscious of it having helped him in the formation of his opinion.

Mr. Matteson:

It seems to me the matter of corroboration is independent of the way in which he reaches his conclusions.

He has testified that he is familiar with these rules, and that these rules do constitute the standard.

The Court:

But he says he is not familiar with any rule on that particular point, I understood; he is not familiar with anything in the book on that point; isn't that right?

A. I couldn't recall it now, sir; that is quite true.

Q. Well, have you recently examined the book, Mr. Thompson?

A. I have recently seen it; yes.

The Court:

I will sustain the objection to that.

Q. You were asked, Mr. Thompson, about the double riveting of tanks, and the inference seemed to be that that would be somewhat unusual. Can you tell us whether or not in some instances double riveting of tanks is required by Lloyd's rules, Libelants' Exhibit 101?

A. May I ask whether the question means, gasoline tanks, or tanks in general?

Mr. Matteson:

I will withdraw the question, if your Honor please, and put it in a different way.

Q. I show you Rule #8 of page 113 of Libelants' Exhibit 101, and ask you if that rule does not require double riveting of tanks.

A. What rule is that?

Mr. Underwood:

If your Honor please, I object to the question on the basis that the rule speaks for itself.

The Court:

Are you aware of anything in that book, Lloyd's Register, which has been helpful to you on the matter of the formation of your opinion—the corroboration of your opinion or the formation of your opinion on the matter of double riveting of gasoline tanks?

A. Recently, do you mean, your Honor?

The Court:

Any time.

A. Yes, sir.

The Court:

Do you think you can find something in there that has helped you in your study of that subject?

A. And in complying with rules.

The Court:

All right, sir; the objection is overruled.

A. Yes, sir.

Mr. Underwood:

What is that provision?

A. The shell boundary bars and the butts of the bulk-head plating and shell plating are to be at least double riveted.

Q. Does that rule refer specifically to gasoline tanks?

A. To deep water tanks. The sub-heading is, riveting deep water tanks.

Q. Would or would not such a provision be more or less important with respect to tanks containing gasoline?

A. They would be equally important, and in my opinion more important. That is also referred to later down in the next paragraph; deep oil fuel tanks; it is repeated. Do you wish me to draw attention to that?

Q. Yes, please call attention to that.

A. In the next paragraph, your Honor, it states, the shell boundary bars and the seams and butts of shell, deck and bulkhead plating are to be at least double riveted. It further states, double bars, single riveted, if desired, may be fitted to the boundaries—double bars. For single bars they have to be double riveted.

Q. And this second provision—

A. I have read that.

Q. This second provision that you read is in the paragraph headed, Deep oil fuel tanks?

A. Yes, sir.

Q. What is the difference between the characteristics of oil fuel and gasoline?

A. From my experience and in my opinion gasoline is much more apt to leak and seep, rather than fuel oil; and fuel oil has not the highly volatile gases in it. Fuel oil I believe is oil having a flash point of 115 above,—speaking from memory, your Honor.

Q. What is the difference between a single bar and a double bar?

A. Well one is a single iron—one side; the other is each side of the plate.

Q. If there is one each side, you have three pieces of metal joined together, is that correct?

A. Yes; three steel joint is a better joint than a single bar with the same size of angle.

Mr. Matteson:

I think that is all at this time, if your Honor please.

#### Re-Cross Examination.

By Mr. Underwood:

Q. Mr. Thompson, do you say that these extracts which you read from page 113 of Libelants' Exhibit 101, refer to cylindrical tanks?

A. No, sir; no.



Q. Of the type on the Seminole?

A. I didn't say that at all.

Q. They don't have any reference to a cylindrical tank like those on the Seminole, do they?

A. I will read that—

Q. They don't, do they?

A. They don't refer to the Seminole tanks at all.

Q. I am not clear, Mr. Thompson, where we stand about this exhibit. I understood that I asked you if you could say that Exhibit #11 leaked on or before the time of this fire, and that you told me you could not say: is that your evidence?

A. That was my evidence.

Q. I asked you a question about the stresses parallel with the axis of a cylindrical tank, and the stresses at right angles to those stresses. What further information do you need to answer my question?

A. Well I can't quite follow what—could you get your adviser to make a sketch, make it clear when you want from me? I will answer you frankly and fully.

Q. I ask you to assume a cylindrical tank of the type which you saw on the Seminole.

A. Yes.

Q. I ask you to assume that it is standing upright.

A. Yes.

Q. And that it is full of gasoline.

A. Full of gasoline.

Q. Will you tell me which are the greater; the stresses that are vertical with the axis of the tank,—parallel with the vertical axis of the tank, or the stresses which are at right angles to those stresses?

A. I would say; those were perpendicular.

Q. Which are the greater stresses, Mr. Thompson?

A. At what point—perpendicular—due to the head of the oil,

Q. Mr. Thompson, I show you Exhibit 99 and ask you whether or not the head of the rivet is inside or outside of the tank.

A. Outside the tank; that is the concave type bottom.

Q. Assuming that the surface between the tank shell and the concave bottom above the rivet is not tight, at the point A; at how many points can the liquid there get at the rivet?

A. Get all around the rivet.

Q. In the plane between the two pieces of tank?

A. I believe that was my evidence; yes, sir.

Q. Now look at Exhibit P for identification; is the head of the rivet inside of the tank?

A. Yes, it is.

Q. Assuming that there is a space between the shell of the tank and the convex bottom, is it not a fact that the liquid there can get at the rivet between that?

A. Exactly the same as in the other.

Q. And is it also not a fact, if the rivet head is not tight, the gasoline or whatever the liquid may be, can get at the rivet also, between the head and the—the head of the rivet and the head of the tank?

A. Which liquid do you refer to?

Q. Any liquid that may be in the tank.

A. Water wouldn't, because it would flow through there, as I described, going down to point C.

Q. Whatever the liquid in the tank is, it can get at the rivet in two places, assuming the thing is not tight, with the convex bottom, but only one place with the concave bottom; isn't that so? Isn't that so?

A. Yes, but that does not constitute a danger at all; that does not increase the hazard in any way; the other does.

Mr. Underwood:

That is all.

## Further Re-Direct.

By Mr. Matteson:

Q. Will you just explain your last answer to us, Mr. Thompson?

A. Any attack on the neck of the rivet, your Honor, at the head, in the convex type, would have very little effect on the tightness of the rivet, provided that rivet was a fitted rivet in a drilled hole; and that is one of my objections to—one only, there are others—objections to a punched plate in a gasoline tank. In the process of riveting, with the fitted rivet, under heat, your Honor, any leak there in a properly fitted rivet will not be—any leak there will not be transmitted, in a properly fitted rivet, along the rivet. It will attack the corrosion—that is water will attack the corrosion, the rivet there, just the same as it would, as Mr. Underwood has rightly pointed out in the concave type; or rather in addition; in other words, in the concave type, moisture, water, would attack the rivet there.

Q. Indicating the section of the rivet—

A. Vertical at A.

Q. Indicating the section of the rivet between the two plates.

A. Yes, sir; it is true, that moisture would do the same thing in the convex type, and also at the back of the head of the rivet; but that would not increase—would not add to the danger of that rivet, with a properly fitted rivet in a properly drilled plate of a tank. With a punched plate, I admit that there is a grave danger—Mr. Underwood didn't ask me; a grave danger that he has pointed out. I just replied to the question he gave me.

Q. But in the concave type, or the convex type, as I understand your opinion, water would be less likely to remain in the vicinity of and to attack the rivet?

A. Yes, sir; I have already stated that.

Q. You have been asked about these cylindrical tanks. Will you tell us whether or not they are commonly used in vessels of the type of the Seminole, for gasoline tanks?

A. Do you mean, tanks of that size, Mr. Matteson?

Q. Yes.

A. Approximately that size?

Q. Yes; cylindrical tanks of about this size; is it usual good practice, or is it not?

A. That type, with the concave bottom, and no chance of getting inside?

Q. I am talking generally now just about the type of tank; a large cylindrical galvanized tank of the capacity of about 550 gallons; is that type of a tank ordinary good practice, in yachts of the type of the Seminole?

A. From my experience and in my opinion I would not call it common or good practice. I don't know that I can go any farther than that, Mr. Matteson.

Q. Is there any difference between a cylindrical tank and any other sort of a tank, in the requirement with respect to riveting to make the tank tight? I refer particularly to double riveting.

A. Oh, no; the same thing would apply definitely to both; just as necessary in both.

Q. One more thing. In answer to Mr. Underwood's question you said that you could not say that this valve leaked, prior to the fire; referring to Exhibit #11. Why did you answer the question that way?

A. Because I can only speak of that valve as I see it today. I don't know what its state was at that time. My evidence has been on the valve that I saw yesterday, not—

Mr. Matteson:

That is all.

Mr. Underwood:

No further questions.

(Witness excused.)

Mr. Matteson:

Would there be any objection to our making arrangements to open these other valves in this suit? We couldn't open them in Court the other day; it would take a heavier wrench. If Capt. Patten can arrange it, we would be glad to arrange it, under any circumstances that the Court and Mr. Underwood think fit.

The Court:

Anything is agreeable to me if you are agreeable. Is there any objection to Capt. Patten looking after that?

Mr. Underwood:

I think Capt. Patten and Mr. Monroe might attend to it together. \* \* \*

The Court:

It is agreed then it may be taken from the Court room by Capt. Patten.

(At 12:30 o'clock p. m., Court recessed until 2 p. m. of the same day, March 24, 1939.)

March 24, 1939. 2:00 P. M.

Reconvened pursuant to recess.

Appearances same as heretofore noted.

1312 Thereupon J. N. PATTEN, a witness in behalf of the Libelants, resumed the stand and testified further as follows:

Direct Examination.

By Mr. Matteson:

Q. Captain Patten, during the lunch hour today, in company with Mr. Monroe, did you take apart this Crane valve number 150, which is a part of Exhibit 11?



A. I didn't take it apart, but the machinist down at the shipyard did in our presence.

Q. What did you find the type of this valve to be?

A. The valve is really a floating type, with a composition or fiber seat, or washer rather.

Q. Will you show us how this valve goes together. We have three parts here. First of all, this upper part, what do you call that?

A. That's on the stem.

Q. This smaller part, what do you call that?

A. That's the floating valve, because it is not an integral part of the stem.

Q. It slips on and off in a slot on the end of the stem?

A. Yes, sir.

Q. All right; this floating valve—

A. This is the floating valve.

Q. This floating valve had what kind of a seat?

A. Composition or fiber.

Q. In one side of this valve there is a depression and a screw which screws into a threaded hole in the center, is that right?

A. Yes, sir.

Q. And that comes out, and under that is fitted the fiber seat?

A. Fiber or composition.

Q. Then the threaded part is screwed in to hold that seat in position?

A. Yes, sir, and in turn sets on this seat in the body of that valve.

Q. In the body of the valve there is a hole against which this composition seat fits—this composition seat, I take it, is somewhat larger than the hole, is that correct?

A. Yes, sir.

Q. So that when the valve is screwed down tight the composition seat goes against this hole and that is what prevents the flow of liquid through the valve; is that correct?

A. That is correct. That is similar to what you have on faucets in a kitchen.

Q. When this valve was taken apart did you find any trace of the original composition or fiber?

A. There is some on that paper there that fell out.

The Court:

You say this portion right here unscrews?

A. Yes, sir.

The Court:

And this composition washer goes underneath there?

A. Yes, sir. The composition washer has a hole in it and this screw goes through that hole and holds the washer in place.

The Court:

When the stem is pressed downward by turning the wheel at the upward end of the stem, does not throw this piece that I have my finger on?

A. No; that stays stationary.

The Court:

What does it throw against the hole of the seat?

A. This washer in this stays on this flat edge here.

The Court:

The washer that is underneath that sets around the edge?

A. Yes, sir.

(By Mr. Matteson):

Q. This entire seat moves up and down in the valve when the handle is turned, is that correct?

A. No, the seat doesn't move.

Q. But the stem on the assembly part of the valve moves up and down?

A. Yes, sir.

Q. As the handle is turned?

A. Yes, sir.

Q. That is right?

A. Yes, sir.

Q. And that brings the washer against the seat?

A. Yes, sir.

Q. Is there any part of the washer remaining in this assembled part of the valve?

A. Yes, there is some in there and there is some on that paper there, too.

Q. Are these the remnants of the fiber or composition seat on this paper?

A. Yes, sir.

Mr. Matteson:

I would like to put this in an envelope and have it marked as an exhibit. Mr. Underwood, may I inquire if you would feel disposed to concede that these remnants are a part of the fiber or composition seat. It would seem to be the fact, and I thought we might save ourselves the trouble of trying to preserve these remnants.

Mr. Underwood:

I cannot agree to it in the way in which you put it. It was some sort of a seat which was not metal. If that will serve your purpose, I will agree to that, but I don't know whether it was fiber or whether it was composition or what it was.

Mr. Botts:

\*Fiber or composition would cover about everything.

Mr. Underwood:

Is it your point that you want to exclude "metal"?

Mr. Matteson:

I don't think it is metal. I think it is fiber or composition.

Mr. Underwood:

Is the point of your request of me that I agree that it wasn't metal?

Mr. Botts:

We will agree that it is remnants of a washer and not metal but a composition or fiber.

Mr. Underwood:

That is satisfactory.

Mr. Matteson:

If your Honor please, I think we had better keep the remnants. We will get an envelope and put them in it. It is agreeable to me to agree that it was not a metal seat.

Mr. Botts:

And that it is some kind of a removable washer of some substance other than metal.

The Court:

Let it be marked.

(Thereupon the remnants above referred to were placed in an envelope and marked Libelants' Exhibit 103.)

(By Mr. Matteson):

Q. Captain Patten, I take it that this is not a valve with a metal to metal seat?

A. That is right.

Q. Would you consider a valve which does not have a metal to metal seat, which has a composition or fiber washer of some kind, a proper valve for confining gasoline?

A. I think I answered that question before but I will confirm it by saying that it is not proper.

Q. Why is that?

A. Well, the action of alcohol or any liquid in a short period of time will cause these washers to soften up and disintegrate and cause a leaky valve, and that happens on fresh water vessels.

Q. You said "alcohol", did you mean alcohol?

A. Gasoline, and I imagine alcohol would have the same effect.

Mr. Matteson:

That is all.

#### Cross Examination.

By Mr. Underwood:

Q. I show you a paper which has on it a diagram of a valve and ask you to tell me whether or not that represents substantially the type of valve that you have just been talking about?

A. It is not the same valve.

Q. What are the differences?

A. That screw that—

Q. Perhaps I can shorten it up. Does it represent the manner in which the flow of gasoline was set by the valve that you have just had in your hand; if not, what are the differences?

A. This is the stem—this small screw with the flat head.

Q. In other words, on the diagram the screw has a head, whereas on the valve itself there is no head?

A. Evidently the keeper screws on this stem there, and this keeper on that is not as big as—

Q. By "keeper" you refer to the thing marked on the diagram "disc detaining nut, brass"?

A. Yes, sir.



Q. Now will you point out any other differences that you observed?

A. Well, they call this washer (pointing) "Crane Renewable Disc."

Q. And you call it a washer?

A. Yes, sir.

Q. Any other differences? I mean in construction now and now in the names of the parts.

A. This stem principle—let me have that to compare them.

Q. Here is it, and if you need the other part you may have it.

A. That bonnet is the same.

Q. Are the two substantially the same in principle and operation?

A. They are quite similar, yes, sir. I imagine this is a refined type of the same valve; it looks so to me; they have used a lot of the same principles in design.

Mr. Underwood:

May we have this diagram marked.

(Thereupon the diagram above referred to was marked Respondent's Exhibit "R" for Identification.)

Q. Now, as I recall, Captain Patten, when I asked you the other day what the figures 150 on there mean, you told me that you did not know?

A. I did not. I said it was pressure.

Q. It is intended and designed and sold to withstand a pressure of 150 pounds?

A. Yes, sir.

Q. Of steam?

A. Steam or water.

Q. How much pressure would have to be applied to such a valve on the Seminole tanks, assuming all valves up to that valve were open and the tanks full?

A. Less than three pounds; wait a minute; about three and a half pounds, I would say, with a full head of gas in the tank.

Q. Not more than four pounds?

A. No, sir.

Q. Do you know whether Crane Company made any composition seats that were designed for gasoline?

A. No, I do not know but from practical experience I would hate to experiment with it.

Q. You don't know whether Crane Company made any such things or not?

A. No.

Q. I call your attention to a paragraph in this pamphlet, which is on the reserve side of the diagram that you have just examined, Respondents' Exhibit "R" for Identification, as follows: "For special service, such as oil or gasoline, orders should specify the service, as the valve are furnished with a special disc to suit conditions." Did you know that Crane Company furnished a special disc for gasoline?

A. I did not.

Mr. Underwood:

That is all.

(Witness excused.)

1320 JOHN A. THOMPSON, previously called as a witness by the Libelants, resumed the stand and testified further, as follows:

Direct Examination.

By Mr. Matteson:

Q. Mr. Thompson, I show you this Exhibit 11 and call your attention to the valve which is marked Crane 150,

which has now been taken apart, and ask you to examine the parts and tell me what type of a valve that is?

A. The whole thing is a globe valve, a valve having a float and the seat is not metal to metal.

Q. What sort of a seat does it have?

A. It appears to have interposed between the valve and the seating some kind of a washer, the nature of which I cannot tell.

Q. Assuming that it was not a metal washer, in your opinion would this valve be a proper valve for confining gasoline?

A. From my experience I would say it was an improper valve for gasoline.

Mr. Matteson:

That is all.

Mr. Underwood:

No questions.

Mr. Matteson:

If your Honor please, I want to offer in evidence two additional depositions which were taken in New York the day before the trial opened, the deposition of Ruth E. La Barr, secretary to Mr. E. D. Wright, whose deposition had been taken the week before and which I offered in evidence at the opening of the trial, in connection with which there was offered as Exhibit 28 thereto Lloyd's Register of American Yachts for 1933, which was here this morning, and which has been referred to and marked for identification; also a short deposition of Mr. E. D. Wright, recalled, which follows the deposition of Miss La Barr in the same volume.

Mr. Jones:

Did you receive copies of those depositions?

Mr. Underwood:

Yes. I have no objection to them, except reserving the objections made at the taking of the depositions.

The Court:

The same ruling made as made to the other depositions offered in evidence.

(Thereupon the depositions above referred to were marked Libelants' Exhibit 104.)

Mr. Matteson:

Reserving the questions arising out of the agreement in connection with the appointment of an auditor, I think that is our case at this time.

Mr. Botts:

If the Court please, subject to the reservations or understanding in connection with the information to be secured through the auditor, which we can probably cover by stipulation, the defendant Pilkington has no further testimony to offer.

(Thereupon the case of the Libelants and the case of respondent Pilkington concluded in chief.)

Mr. Underwood:

At the suggestion of Mr. Botts, I took the bills from Mr. Pilkington, the receipt or indorsed portions of the checks by which these bills were paid, and the vouchers insofar as I had them, and have put them together in chronological order by years, and I have one group for 1928, consisting of four checks, four vouchers and two bills; one group for 1929, consisting of three checks, two vouchers and four bills; one group for 1930, consisting of eight checks, seven vouchers and seven bills; one group for 1931, consisting of fifteen checks, fifteen vouchers and

twenty bills; one group for 1932, consisting of 16 checks, 16 vouchers and 22 bills; one group for 1933, consisting of fourteen checks, fourteen vouchers and thirty-five bills; one group for 1934, consisting of thirteen vouchers, thirteen checks, and eighteen bills; another group for 1935, consisting of five checks, six vouchers and five bills. Many of these documents are new, but some of them have already been marked in evidence. These include exhibits which have been marked heretofore Libelants' Exhibits 58-A, 58-B, 59-A, 59-B and 75 for identification. They also include Pilkington's Exhibits 1, to 6, inclusive, for identification, and Respondent Phipps' exhibits 1 to 8, inclusive, for identification. I hand these to Mr. Matteson, at his request.

Mr. Matteson:

I would like to have an opportunity to examine them.

1347 Thereupon JOHN L. CODY was produced as a witness in behalf of the Respondent Phipps, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Underwood:

Q. Your full name is John L. Cody?

A. Yes.

Q. Where do you live?

A. At the present time?

Q. Yes.

A. Cordele, Georgia.

Q. What is your business there?

A. Fire chief.

Q. Did you live in Fort Lauderdale in the summer of 1935?



A. Yes.

Q. What was your business there?

A. Fire chief.

Q. When did you first become fire chief of Fort Lauderdale Fire Department?

A. December 12, 1932.

Q. Did you attend the fire at Pilkington's Yard on June 24, 1935?

A. Yes.

Q. What was the first you knew about that fire?

A. By telephone; I received the call myself.

Q. From whom did you receive the call?

A. Mrs. Pilkington.

Q. What did you do after you received that call?

A. We left the station and made a run to the basin.

Q. With what equipment?

A. One combination pump and engine.

Q. About how long did it take you to get to the basin from the time you got the call?

A. Well, I would say between four and five minutes; possibly four minutes.

Q. Do you remember what time you received that call?

A. Well, I don't remember exactly but a running card was made out.

Q. I show you this card. Will you tell me what kind of a thing it is? Don't read it; just tell me what it is.

A. It is a fire record card.

Q. Is that a copy of the fire record card on the date of that fire?

A. Yes.

Q. In whose handwriting is it?

A. Mine.

Q. When did you make it?

A. June 24, 1935.

Q. Mr. Cody, refresh your recollection from that card and tell me what time you received the call advising you of the fire.

A. 1:10 p. m.

Q. When you got to Pilkington's basin what was the condition of things as far as the fire was concerned?

A. Practically the entire basin was afire, excepting the northside; from the east end to the west end flaming, and it came around the west end of the basin and up the southside.

Q. Had you ever been there before?

A. To the basin?

Q. Yes; on previous occasions had you been there?

A. Yes, I had been to the basin.

Q. What did you do about the fire; just tell us in your own words what work you did?

A. Well, upon arrival and seeing conditions existing, I first looked for a runway that was originally built there while the basin was in the city limits; at the time of the fire it was out of the city limits. I found that it had been obstructed, so it was necessary to build a platform to run the pumper over to get at the river where we could draw water from the river, and after getting the pump in operation we operated three lines from the engine.

Q. Did you hear any explosions at any time?

A. During the fire?

Q. At any time that afternoon?

A. I did, yes.

Q. Will you tell us about those, what they were, when you heard them and how many?

A. Well, I don't know exactly the number but there was several or more down in the middle of the basin; several explosions.

Q. What time did you leave that afternoon?

A. I left late in the afternoon.

Q. You may look at your card to refresh your recollection, if you desire to.

A. Five-forty five p. m.

Q. How long did these explosions continue with reference to the time you left?

A. Well; I would say that as fast as the fire would reach—coming back up the southside from the west to the eastside—every now and then there was an explosion on a boat because some of the boats it had not reached as yet; there was quite a number of empty tanks floating on the water from boats that had burned to the waters-edge, and they exploded—

Q. Did you notice what kind of tanks those were; what shape?

A. No, I couldn't say that I did; they were just tanks, different sizes.

Q. Prior to the time you left the basin where did you go?

A. You mean before I left the basin?

Q. Before you left Pilkington's basin with your equipment, where did you yourself go?

A. I was in the Captain's residence, which his office was located in too; I was in there to use the telephone to call up the fire station and ask them if everything was okay, and telling them I would come in shortly.

Q. Who was present at the time you were in there where the telephone was?

A. Captain Pilkington, Mr. Riley and a Mr. Webber, and another gentleman; I don't know his name, but he was a big, stocky fellow.

Q. Was there any conversation?

A. Yes.

Q. Will you tell us what that conversation was, particularly what Captain Pilkington said?

A. When I finished the telephone call they were in conversation relative to the origin of the fire.

Mr. Matteson:

If your Honor please, I object to the conversation that took place at that time; it certainly is not binding on the libelants here in any way, shape or form.

(Extended legal argument.)

The Court:

This particular question as framed is not proper. I don't think the evidence is admissible as against the libelants. I will sustain the objection.

Q. Go ahead and tell us the balance of the conversation.

A. Mr. Riley asked Captain Pilkington what he thought was the cause of the explosion, and he said he couldn't account for it, that there was no gasoline in the boat, and that in the month previous he had attempted to start the generator in the boat and was unable to do so because there wasn't any gasoline.

Q. Now, I will have to ask you the question over again in a slightly different way. Is it a fact or is it not a fact that on the afternoon of the fire, the afternoon of June 24, 1935, at or near Captain Pilkington's house, Captain Pilkington said in substance to or in your presence: "I cannot account for the fire; I know there was no gasoline in the boat because I had been in her engineroom and attempted to run the generator within the month and couldn't do so for lack of gasoline."

A. He said that; something similar to that.

Mr. Underwood:

You may cross examine.

#### Cross Examination.

By Mr. Botts:

Q. Mr. Cody, as I understand it, this conversation which you have related occurred in the office which Captain Pilkington maintained in his home?

A. He had a desk in there; that is the way I construed it; that is where he kept his records.

Q. All right, sir, do you recall anything about the construction or location of the front porch of that house?

A. No, I can't say that I do. When I went in it I came around in the back porch; it was a frame dwelling, and it was on the east end--the fact is that we felt we saved at least that much of the house out of the fire.

Q. Mr. Cody, I have drawn here a rough sort of a sketch. I wonder if you can recollect whether or not it is a fact that the front of the house faces diagonally a little toward the line of the basin.

A. No, I couldn't say.

Q. You don't remember?

A. No, sir.

Q. Do you remember whether or not the front porch of that house runs partly across that front with a notch out there (indicating), and then a room and the right end of the porch as you face towards the house--do you recall that?

A. No, I don't.

Q. Then you would not recall whether or not there is a door into the room and another door into the house in substantially the location that I have indicated on that sketch?

A. No.

Q. Do you remember what part of the house it was that you say you construed to be the office?

A. Well, I was awfully busy, and I walked in and didn't take time to look at the house. I had been to the basin on a number of occasions before, but I never had been in the house before; I just walked in the back way.

Q. You walked into this place through the back part of the house?

A. Yes; there was a little porch there.

Q. Do you remember whether you walked through one or two rooms from that back entrance before you got into the office?

A. I don't.

Q. Did these other gentlemen walk in the same way?

A. They were in there when I walked in.



Q. You don't know which way they went in, do you?

A. No, I don't.

Q. You know Garry Miller of that Fort Lauderdale, do you not?

A. I do.

Q. Did you see him there that afternoon?

A. No, sir.

Q. Did you see him at all there that afternoon?

A. If I did I don't remember it. There was lots of people there. Two or three of the fellows from Fort Lauderdale were there; I don't know whether Garry was there or not; if he was there I don't remember seeing him or talking with him.

Q. Then you would not recall whether or not Mr. Garry Miller was in this room when this conversation occurred.

A. He wasn't that afternoon; not when I was in there.

Q. Was Mrs. Pilkington in there?

A. No, sir.

Q. Do you know Joe Anderson, Mrs. Pilkington's brother?

A. The man that acted as captain that worked around the basin?

Q. Yes.

A. I know him pretty well.

Q. He wasn't in there?

A. No, sir.

Q. And the conversation, as you recall it, is that Captain Pilkington said that a month or so before he had attempted to start up the generator and had been unable to do so because he could get no gasoline.

A. He said a month before.

Q. About a month before?

A. Yes.

Q. What was Captain Pilkington's condition at that time; was he excited or calm?

A. Well, he appeared to be as normal as he ever was.

Q. Quite calm and collected?

A. As far as I could see, yes.

### Cross Examination.

By Mr. Matteson:

Q. Mr. Cody, it is well known that tanks which have had gasoline in them will explode.

A. I have been told so; I never had experience.

Q. You spoke of seeing a number of them explode as they came floating from the boats?

A. That is right.

Q. And this conversation that you had with Captain Pilkington, would you fix it by hour as nearly as you can? What was the time you left there?

A. Our running card shows 5:45.

Q. How long before that was this conversation?

A. Just a short time before that; I don't know exactly.

Q. What do you call a short time; half an hour?

A. Possibly so; maybe more or less; I don't know the time.

Q. Half an hour is about as near as you can come to it?

A. I would not say. I know I called up myself prior to leaving there.

Q. Was the fire out when you left?

A. Yes, practically out; there was some smoke and smoldering.

Q. Where was Mrs. Pilkington at the time you left?

A. I didn't see her at the time I left.

Q. Did you say you didn't see her at the time you left?

A. That's right.

By Mr. Botts:

Q. Did you see Mr. Riley; did you say Mr. Riley was there?

A. Mr. Riley, yes.

Q. Who was Mr. Riley, do you know?

A. I didn't know him at the time, but about two months later I found out who he was.

Q. What Mr. Riley was it; was it the Mr. Riley who is said to be Mr. Phipps' secretary?

Mr. Underwood:

I object to that.

A. He never told me.

Mr. Underwood:

He is making him his own witness, I think—

Mr. Botts:

He has testified that a Mr. Riley was there. I have a right to inquire as to what Mr. Riley he means.

The Court:

The objection is overruled. This is just for identification.

A. I didn't know who he was at the time.

Q. When you finally found out who he was, what Mr. Riley did you find out it was; what was his connection?

A. I figured out that he was connected with the owner of the Seminole boat.

Q. He was connected with the owner of the Seminole boat?

A. He didn't tell me that. He had something to do with the boat; I don't know what it was.

Q. Who were the other men you say you saw there?

A. Mr. Webber and another gentleman; I don't know the other gentlemen's name.

Q. Now then did Mr. Riley have anything to say on that occasion?

A. Only just what I have said a minute ago, when he asked the Captain as to the origin of the fire.

Q. He just asked the Captain what was the origin of the fire; he just asked Captain Pilkington what was the origin of that fire?

A. Yes.

Q. He didn't say anything else?

A. If he did I don't remember it; I didn't stay there very long; I was trying to discover the origin of the fire myself.

Q. Was the fact that Captain Abel had boarded the boat at that time discussed?

A. Who is Captain Abel?

Q. He is the man that was killed.

A. Yes—he was in the boat; the man that was killed was in the boat.

Q. You misunderstand me. Was the fact that Captain Abel boarded the boat mentioned or discussed at this meeting which you have mentioned?

A. No.

Q. You don't remember any mention of Captain Abel there?

A. No.

Q. By either Mr. Pilkington, Mr. Riley or Mr. Webber?

A. No, sir.

Q. Or yourself?

A. No, sir.

Q. It was not mentioned that Captain Abel had gone aboard the boat?

A. That was talked about when I first arrived at the fire, relative to the man on the boat.

Q. It wasn't mentioned as to how the fire started?

A. No. At the time I was using the telephone.

Q. It never was suggested that perhaps Captain Abel did something that started the conflagration?

A. No, sir, nothing was said relative to that.

Q. Now, Mr. Cody, I want you now to think back and tell us if it is not a fact that you actually saw and talked to Mr. Garry Miller up there at that fire that afternoon?

A. I can't remember that I did; I can't say, sir.

Q. You would not want to say that you did not see him?

A. No, sir.

Q. I want to ask you this question; if it is not a fact that that afternoon up at the fire, sometime after the fire was pretty well burned out, along toward the latter part of your stay there, perhaps we will place it, between the hours of four in the afternoon and five-forty five, the time you left—I want to ask you if you didn't talk to Mr. Riley, this same Mr. Riley whom you have mentioned.

A. I talked with Mr. Riley in the office at the time I was phoning; that is the only time I talked with him.

Q. That is the only time you talked to him?

A. That afternoon, yes.

Q. Now at that time and place did Mr. Riley say to you in substance—I am not trying to quote the exact words—but didn't he say to you in substance: "I sent Captain Abel down to the boat Seminole to get some fishing tackle for Mr. Phipps."

A. No, not in my presence.

Q. He did not say that?

A. No, sir.

Q. Now at whatever hour your conversation was with Mr. Riley, Mr. Cody, didn't you, either in the house or near the house of Captain Pilkington there, say to Mr. Garry Miller in substance as follows: "Mr. Riley told me that he (referring to Mr. Riley) sent Captain Abel down to the boat Seminole to get some fishing tackle for Mr. Phipps".

A. I did not; no, sir.

Q. Do you mean to say that you didn't or that you don't recall?

A. That I did not.



Q. You did not?

A. That is right.

Re-Direct Examination.

By Mr. Underwood:

Q. Do you know any of the members of the Phipps family?

A. No.

Q. Do you have any connection with them whatsoever?

A. None whatsoever.

Mr. Underwood:

That is all.

(Witness excused.)

1360 Thereupon: W. L. WEBBER was produced as a witness in behalf of the Respondent Phipps, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Underwood:

Q. What is your name?

A. W. L. Webber.

Q. Where do you live?

A. Six five one North West Forty Second Street.

Q. By whom are you employed?

A. Bessemer Properties, Inc.

Q. By whom were you employed in the summer of 1935?

A. Bessemer Properties, Inc.

Q. Their office is at 1317 Biscayne Boulevard?

A. That is right.

Q. In April, 1935 did you have anything to do with the houseboat Seminole?

A. Yes.

Q. Did you go aboard her?

A. Yes.

Q. Do you remember what date you went aboard her?

A. Yes.

Q. What date?

A. April 19, 1935.

Q. Did you have a conversation with anybody before you went?

A. Yes.

Q. Did you have a conversation with Mr. J. S. Phipps before you went?

A. No.

Q. Did you have a conversation with Mr. Roy Hawkins before you went?

A. Yes.

Q. Did you have a conversation with anybody else before you went?

A. No.

Mr. Matteson:

I don't think, if your Honor please, that the conversations this witness had with these people has any bearing on this matter.

Mr. Underwood:

I am not asking him what the conversations were, or what his instructions were—

The Court:

I think the question as propounded is proper.

Q. After your conversation with Mr. Hawkins what did you do?

A. I left the office with Mr. James Davis and rode up to Fort Lauderdale.

Q. Did you have a paper with you at that time?

A. Mr. Hawkins gave me a written order to present to Captain Pilkington, showing my authority to go on the boat.

Q. I show you Libelants' Exhibit 52, and ask you whether or not that is the letter which you had and presented to Captain Pilkington.

A. It is.

Q. Did you have anything else with you at that time?

A. I had a set of keys.

Q. Where did you get the keys?

A. They were given to me by Mr. Hawkins.

Q. How many were there?

A. There was a group of keys.

Q. Do you remember exactly how many?

A. No.

Q. What is your best recollection as to how many?

A. Probably six or seven.

Q. When you reached Fort Lauderdale what did you and Mr. Davis do?

A. After giving our letter to Captain Pilkington we boarded the boat and went inside and removed trophies, silverware and linens, and put them in the car and took them back to Miami.

Q. How much material did you remove from the boat?

A. Seven or eight large packages of linens, some thirty or forty pieces of silverware, including trays, pitchers, and so forth.

Q. How many trips did you make from the boat to your conveyance with those bundles?

A. I don't recall, however, it would necessitate several trips apiece.

Q. Several trips for you yourself and several for Mr. Davis, Jim Davis?

A. Yes.

Q. Where did you go in the boat?

A. In the various cabin rooms, as well as the corridor, and looked in the drawers to see that all of the linens and equipment was removed.

Q. Did you go any place else?

A. In the corridor on the starboard side of the boat; Mr. Davis was interested in seeing the mechanics, and we looked in the window which leads into the engineroom.

Q. Did either of you go in the engineroom?

A. No.

Q. How was the window when you arrived at that point?

A. Open.

Q. How was it when you left?

A. Open.

Q. Did you observe the windows in the corridor on the outside of the boat?

A. No, sir.

Q. Did you smell anything while you were at or near the inside of that window?

A. No.

Q. Did you smell any gasoline?

A. No.

Q. Did you observe any gasoline in the engineroom?

A. No.

Q. Did you have a conversation with Captain Pilkington about the times you left?

A. After we left the boat and were about ready to get in the car and go back to Miami, Captain Pilkington requested that he would like to have some keys to the boat to have access to the boat.

Q. What did you do about the keys?

A. I told him I did not have authority to turn the keys over to him.

Q. When you left the boat did you leave it locked or unlocked?

A. Locked.

Q. Was there anything more said between you and Captain Pilkington about keys at that time?

A. I told him that when I returned to Miami I would give the keys to Mr. Hawkins, and if he felt that Captain Pilkington should have them we would send the keys back.

Q. When you came back to Miami did you have a conversation with Mr. Hawkins?

A. Yes.

Q. Following that conversation did you do anything with the keys?

A. I sent them to Captain Pilkington.

Q. I show you Libelants' Exhibit Number 54; do you recognize that document, Mr. Webber?

A. Yes.

Q. Is that a letter you wrote to Captain Pilkington?

A. Yes.

Q. What keys did you send with that letter?

A. The keys with which we opened the door, with which we opened the boat when we were up there.

Q. How many were there?

A. A group of keys, possibly six or seven.

Q. Did you get any response from Captain Pilkington?

A. We received a letter acknowledging receipt of the keys.

Q. I show you Libelants' Exhibit 61, dated April 23, 1935; is that the letter of which you speak?

A. Yes, it is.

Q. From the time you sent that letter to Captain Pilkington with the keys up to the time of the fire, did you have any further message of any nature from Captain Pilkington?

A. No.

Q. Did he make any further request of you for any keys?

A. No.



Q. On the day of the fire did you go to Pilkington's yard?

A. Yes.

Q. Were you alone or accompanied by somebody else?

A. I was accompanied by Mr. Roy Hawkins.

Q. Did you have a conversation with Captain Pilkington or participate in a conversation in which he had?

A. I was present at the time of a conversation.

Q. Where was the conversation that you have in mind, and about what time of the day?

A. It was in a little room in his house; I believe it was in a little building there anyway; Mr. Hawkins was talking to Captain Pilkington.

Q. Will you tell us what Captain Pilkington said?

Mr. Matteson:

I object to that on the ground that it is not binding or admissible against the respondents.

Mr. Underwood:

I am offering it for the double purpose, if your Honor please, as an admission of Captain Pilkington against interest, and also I intend to impeach him.

The Court:

The objection on behalf of the libelants is sustained. It is admitted as against the respondent Pilkington.

Q. Will you tell us now the substance of the conversation?

A. We walked in the room in the presence of Captain Pilkington, and Mr. Hawkins asked him how it could have happened, and Captain Pilkington said that he didn't know, that he could not understand it; that he had been in the engineroom of the Seminole prior to the fire and had attempted to start the generators and could not do so because there was no gasoline in the tanks.

Q. Is it the fact, Mr. Webber, that on the afternoon of the fire, at or near Captain Pilkington's house, he said in your presence in substance: "I cannot account for the fire; I know there was no gasoline in the boat because I had been in the engineroom and attempted to run the generator within the month and could not do so for lack of gasoline?"

Mr. Matteson:

I understand this is merely offered for the purpose of impeaching the witness Pilkington.

The Court:

That is the way I understand it.

A. Yes, sir.

Q. He said that at that time and place?

A. Yes, sir.

Mr. Underwood:

You may cross examine.

#### Cross Examination.

By Mr. Botts:

Q. Mr. Webber, where did that conversation take place; do you remember?

A. Just inside of the little house in the room there.

Q. Who was present?

A. Mr. Hawkins, Mr. Riley, Captain Pilkington and the fireman and myself.

Q. Now, Mr. Webber, how did you gain access to this room?

A. I went in with Mr. Hawkins.

Q. Now the front of the house is towards the yacht basin, a little diagonally towards the yacht basin; do you

remember whether you went in one of those front doors or not?

A. I believe it wasn't on the front of the house.

Q. Now do you remember what part of the house this little office occupies; I am not sure whether you said awhile ago that it was in the office. Was it in the office?

A. I think it was in the office.

Q. What part of the house was this little office in?

A. I don't remember.

Q. You don't remember anything about that?

A. No. I know that the door lead directly out on perhaps a little porch.

Q. Now then Mr. Webber, I am just going to ask you to assume a general situation here, which is not at all technically accurate, but assuming that this line that I have drawn along here (indicating) is approximately the water's-edge along there at the basin, and that this rectangular place, with little notched place out on the side is Captain Pilkington's house, and this (indicating) is the porch—I will ask you if you recall whether or not you came in the house from towards the yacht basin or from the point opposite the yacht basin?

A. Is this (pointing) the house?

Q. That is supposed to be a rough representation of the house.

A. And this (indicating) is the porch?

Q. That is supposed to be an open porch. I will ask you if you came in through this place that I have marked "porch".

A. Mr. Botts, I don't remember the geography of it now, to tell you the truth.

Q. Do you count the front of the house as towards the street where you drive up in a car; is that what you call the front?

A. Yes.

Q. When you said you went into the back of the house you had reference to coming into that part of the house

opposite the side which you approached when you drove up in the car, is that correct?

A. Yes.

Q. You came in on a little porch, is that your recollection?

A. That is my recollection.

Q. Now then do you recall whether or not when coming up on this porch you went forward into a room, through a door into a room, or whether you turned to your right as you—

A. I don't remember definitely, but I don't believe that we went straight ahead to a little room.

Q. What was the fireman doing in this house?

A. He was there when I got in there.

Q. He was in there when all of you gentlemen walked in?

A. He was there when I went in; I went in after Mr. Hawkins and Mr. Riley.

Q. How long after they went in did you go in?

A. Just a few seconds.

Q. You followed them in almost immediately?

A. Yes.

Q. When you got in the room the fireman was in there?

A. As I recall.

Q. What was he doing?

A. I don't know.

Q. Was he engaged in a conversation with Mr. Riley and Mr. Hawkins and Captain Pilkington, do you recall?

A. I don't recall.

Q. You don't recall a thing about that?

A. No.

Mr. Botts:

I think that is all.

## Cross Examination.

By Mr. Matteson:

Q. You are employed by the Bessemer Properties, Inc.; is that the name?

A. Yes.

Q. Is that the full name of the corporation?

A. Bessemer Properties, Inc.

Q. What is your position with that company?

A. I am employed as assistant property manager.

Q. Is that the only capacity in which you serve there?

A. That is the only capacity at the present time, yes.

Q. Was it during June, 1935?

A. Yes. I do some purchasing for the company.

Q. What is that?

A. I do some purchasing for the company.

Q. You receive your salary from that company, do you?

A. Yes.

Q. You receive it entirely from that company?

A. Yes.

Q. Is it a fact that the Bessemer Properties, Inc. is a corporation in which Mr. John S. Phipps holds a substantial interest?

A. I don't know definitely that he does.

Q. You believe that he does, do you not?

Mr. Underwood:

I object to what the witness believes.

Mr. Matteson:

Is there any objection to admitting that?

Mr. Underwood:

We will give you the facts. That is not the fact. I am informed that John S. Phipps owns no stock in the Bessemer Properties, Inc.



Mr. Botts:

Directly, you mean?

Mr. Underwood:

Or indirectly.

Mr. Botts:

We will show you the entire corporate structure, but there is the right way to prove it.

Mr. Matteson:

I will withdraw the question.

Q. Who is Mr. Roy Hawkins that you speak of?

A. He is the manager of our company.

Q. Manager of Bessemer Properties, Inc.?

A. Yes.

Q. Is that the only position that he holds as far as you know?

A. As far as I know.

Q. It is a fact, is it not, that in addition to your duties for Bessemer Properties, Inc. you do take care of matters of various kinds for Mr. John S. Phipps, for other members of the Phipps family?

A. If Mr. Hawkins tells me so, yes.

Q. You were not employed by the Seminole Boat Company, of course?

A. No.

Q. You had no official or other connection with them?

A. No.

Q. This letter that you sent on April 20, 1935, Libelants' Exhibit 54, was signed "Seminole Boat Company", was it not?

A. Yes.

Q. How did you happen to sign "Seminole Boat Company" to that letter?

A. I don't remember that.

Q. You have an office with the Bessemer Properties Company; I mean a room of your own?

A. Yes.

Q. And you have a secretary?

A. Partially.

Q. Who takes care of your correspondence, I assume?

A. Yes, sir.

Q. Does the Biscayne Boulevard Company occupy the same offices with Bessemer Properties, Inc.?

A. It is my understanding that there is no more Biscayne Boulevard Company.

Q. There was at one time?

A. Yes.

Q. And that was so in 1935, was it not?

A. Yes.

Q. At that time they occupied the same offices that Bessemer Properties, Inc. occupied?

A. Yes.

Q. Is that also true of the Boulevard Mortgage Company?

A. Well, I don't know about that; the Boulevard Mortgage Company had books in the office which were kept there.

Q. Were they kept by the same personnel who kept the books for the Bessemer Properties, Inc.?

A. Yes.

Q. Was there a corporation known as Winslow Corporation that had its offices with Bessemer Properties, Inc.?

A. I have heard that name called, but that was prior to my time there.

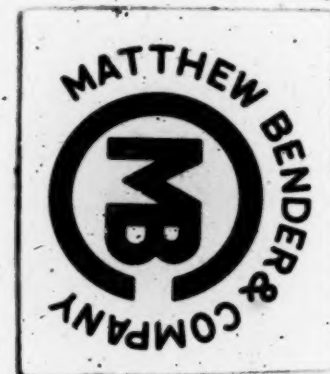
Q. Did the Third Avenue Company have an office there?

A. That is something else—

Q. Did the Third Avenue Company have offices with Bessemer Properties, Inc.?

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A. I have heard the name there, but I have had nothing to do with that company.

Q. Did they have books that were kept there?

A. I think so.

Q. How many companies did occupy those offices; could you tell us that?

A. No.

Q. When you wrote this letter up April 20, 1935--I see that it has initials down here in the corner "WLW:DC"; I suppose the "DC" are the initials of your secretary.

A. They are the initials of Mrs. Coffey.

Q. She is the one who actually wrote this letter?

A. She is Mr. Hawkins' secretary.

Q. I suppose that when you signed this letter you turned it over to someone else to mail.

A. Yes.

Q. And did you turn the keys over to someone else to be enclosed?

A. Yes.

Q. So that you personally did not mail the letter.

A. No.

Q. Then personally you have no knowledge of what keys were enclosed with the letters, except that you turned some keys over to be enclosed, is that right?

A. Yes.

Q. You didn't count the number of keys, you say?

A. No.

Q. Were the keys loose or were they fastened together?

A. They were fastened together; there was a group of them.

Q. Can you remember in what manner they were fastened together?

A. No.

Q. Did they have any tag on them?

A. They may have had, but I am not sure.

Q. Your recollection is not clear as to that?

A. No.

Q. Then you really don't know what keys were included in that bunch, do you?

A. Except that they were the keys that I used for gaining admission to the boat.

Q. Who was Mr. James Davis?

A. He was an employee of our company.

Q. A young man; a younger man than yourself?

A. A little, yes.

Q. A white man or colored man?

A. Yes.

The Court:

White man or colored?

A. White man.

Q. I understand that you did not enter the engine-room of the Seminole when you were there?

A. We did not.

Q. You made no attempt to enter it?

A. No.

Q. You did not attempt to open the hatch leading into the Seminole engineroom?

A. No.

Q. What keys did you use out of this bunch; what doors did they fit; one for the stern door of the Seminole?

A. I remember we went in the stern door.

Q. And you opened that door?

A. Yes.

Q. Did you use the keys for opening any other door?

A. I don't remember if that was necessary.

Q. You only have recollection with respect to opening the stern door with a key?

A. Yes, sir.

Q. What did Mr. James Davis do at that time?

A. At that time he was employed as a gardener.

Q. Your job was to obtain linen and silverware, as I understand it?



A. Yes.

Q. Where was the linen and silver?

A. Stored in closets and so forth; we found it in several places.

Q. Did you have to go through the different rooms to collect it?

A. We went through the different staterooms in the upstairs living portion.

Q. All of the bedrooms?

A. I think there were three of them; I think that is right.

Q. How many bedrooms were on the Seminole?

A. I don't know for sure.

Q. Quite a number of them?

A. There were several staterooms.

Q. And several cabins?

A. Yes.

Q. You had to go through them to collect the silverware and trophies located there?

A. Yes.

Q. Where did you remove all of these things?

A. Brought them down as we gathered them up.

Q. I assume that you picked out some spot and gathered them all there before you started to take them out to the car?

A. I don't remember that; we may have taken it all out directly to the automobile; we may have carried it all direct to the car as we gathered them up.

Q. How many bundles did you say you had altogether?

A. I would say six or seven or eight bundles of linens and thirty or forty pieces of silverware.

Q. How big were the bundles of linen?

A. Some of them were about that size (indicating).

Mr. Underwood:

Indicating about 3 feet by a foot and a half.

Q. How long were you there altogether?

A. About half an hour or three quarters of an hour.

Q. Did you have any lights as you went through the rooms of the Seminole; were you able to turn on the electric lights?

A. No.

Q. You worked entirely by daylight?

A. It was daylight.

Q. Did you attempt to turn on any of the lights?

A. No.

Q. Do you remember whether or not it was a hot day when you were there?

A. I don't remember that it was anything unusual.

Q. It would be fairly hot in April, wouldn't it?

A. Probably would.

Q. Well, I gather that you had quite a bit of work to do in that half or three-quarters of an hour you were there, going into the rooms and gathering up all of this material and putting it in the car?

A. Yes.

Q. You must have been pretty busy and worked pretty hard during that period, is that right?

A. We didn't waste any time.

Q. I assume you did not waste any time at the engine-room window there.

A. We looked.

Q. You had no reason for looking there?

A. No.

Q. You think now, as you look back, that you have a distinct recollection looking in there?

A. Yes.

Q. What kind of a window was this. Will you describe it to us?

A. As I recall it was a fair sized window that worked on a hinge; I could not be definite about that.

Q. How did it open?

A. As I remember, it opened inside the engineroom.

Q. Did it swing at the top or bottom or side?

A. As I remember, I believe it swung at the side.

Q. You say it was already open when you were there?

A. Yes.

Q. What shape was the window?

A. Well it was somewheres close to square; it may have been a little bit rectangular.

Q. What size would you say it was?

A. About 20 inches by about the same—

Q. About 20 by 20?

A. Yes.

Q. Where was this window located?

A. There was a corridor on the starboard side of the boat—

Q. And this window opened from the engineroom into the corridor?

A. Yes.

Q. About where in the corridor was the window located?

A. Somewheres near the center.

Q. What height is that corridor as you walk through it; how much clearance do you have above your head?

A. I don't remember; it was high enough for a tall fellow.

Q. How tall are you?

A. Five feet eight inches.

Q. You had a foot or more above your head, did you?

A. Possibly.

Q. Now on the bulkhead between the corridor and the engineroom, how was this window located with respect to its distance from the floor or the deck above?

A. It was such that you could see in it.

Q. Where would the sill or the bottom part of the window come on you as you stood and looked into it?

A. I can't remember that.

Q. Don't you remember whether it came up to your chin, or around your waist, or whether you had to stand tiptoe or lean down to look through it?

A. No.

Q. You have no recollection of that?

A. I am sure we didn't have to lean down. I don't remember the height of it.

Mr. Matteson:

I think that is all.

Re-Cross Examination.

By Mr. Botts:

Q. Mr. Webber, referring again to this conversation with Captain Pilkington which you have detailed as having taken place in what you characterize as the office, I will ask you what was Captain Pilkington's condition at that time; I mean, Mr. Webber, was he calm or was he excited or what was his condition?

A. I don't remember that he was excited; I would say that he was rather sorrowful about having the fire.

(Witness excused.)

United States District Court Southern District of Florida,  
Miami Division.

Charles Coryell, et al., Libelants,  
against  
George J. Pilkington and John S. Phipps, Respondents.

In Admiralty No. 122-M-Adm.

Deposition taken on behalf of the libelants, at the office  
of Messrs. Bigham, Englar, Jones & Houston, 99 John  
Street, New York City, March 7, 1939.

Appearances:

Messrs. Batchelor & Dyer,  
Messrs. Bigham, Englar, Jones & Houston, (Mr. Mat-  
teson) for the libelants.

Messrs. Loftin, Stokes & Calkins, Ray C. Alley, Esq.  
Messrs. Burlingham, Veeder, Clark & Hupper, (Mr.  
Underwood) for John S. Phipps.

It is stipulated that the testimony may be taken by a  
stenographer, signing, filing and certification being waived,  
stenographer's fees to be taxable.

1383 E. D. WRIGHT, being duly sworn and ex-  
amined as a witness for the libelants, testified as  
follows:

By Mr. Matteson:

Q. Mr. Wright, what is your business?

A. Stopping explosions on gasoline boats in 1929—and  
that is all I do today.

Q. That is what you specialize in?

A. That is what I specialize in.



Q. But what is your general occupation?

A. Marine surveyor, specializing on yachts.

Q. Specializing on yachts?

A. Yes.

Q. How long have you been in the business of marine surveyor?

A. About twenty-five years.

Q. What was your business before that?

A. Engineering—Pennsylvania tunnels and dredging.

Q. How long have you been specializing in yachts?

A. Oh, fully twenty years.

Q. How much experience have you had with gasoline yachts?

A. I have had ten.

Q. You said something about your specialty being stopping explosions. Will you explain to us what your experience along that line has been.

A. Well, naturally I was sent out by the companies on the various losses, and also to inspect boats to make them safe. I was much interested—in 1923, I got up a pipe leading from the intake—air intake—to the carburetor up above the explosive gases, 4 feet high, to lead backfire up above the explosive gases. That pipe was unofficially approved by the National Board of Fire Underwriters. They made some experiments with me, so much so that Mr. Booth tried to have it broadcast—that was in the first days of broadcast. Mr. S. D. McComb thought so much of it that he tried to get the insurance companies to adopt it, so to speak, but was unable to, but the Elco adopted it on their engines. In 1929, the explosions were so frequent that I took up the matter again and got Mr. Hutson to go up with me to the American Car & Foundry showroom here and examine boats that were there—stock boats. We found them in bad shape for explosion, and Mr. Hutson asked me to draw up some rules, which I did, and which he edited and added

some technical points and signed as Assistant Chief Engineer of the National Board of Fire Underwriters.

Q. Who was Mr. Hutson?

A. Chief engineer of the National Board of Fire Underwriters. (Continuing) Armed with those, I went out among the boat builders and we gradually had those adopted on all the better boats, and the outcome has been that where boats were equipped and run under these rules, insurance companies told me they rarely have trouble except through gross carelessness.

Mr. Underwood:

I move to strike out what the insurance companies told him.

Q. What connection have you with the insurance companies, relating to these rules?

A. Twelve of the insurance companies are my clients.

Q. And for what purpose?

A. Well this, they use the rules and they pay me for doing everything that I can to prevent explosions, by making inspections when explosions happen, and make the reports on them, and—well, the work has grown so that it would be a long long story, but I think that covers it.

Q. What publicity has been given to these rules?

A. Oh, probably about 80,000 of them have gone out all through the United States and Canada, in fact throughout the world pretty well.

Q. To whom have these rules gone out?

A. To everybody that we can possibly get interested. We circularize Lloyd's every year—all the new boat owners—

Q. When you say Lloyd's, what do you mean?

A. Lloyd's Register of American yachts.

Q. When you say you circularize them, just what do you mean?

A. We send out copies like this (producing paper).

Q. Like this one that you hand me?

A. Yes.

Q. You mean you send this to the boat owners who are listed in Lloyd's Register of American yachts?

A. Yes, and boat builders. We have gotten many newspapers throughout the United States to publish them in whole or in part. E. J. Willis put out 50,000 editions of his catalog, in which he incorporated those—or in short form.

Q. Can you tell us, in your circularization of boat owners listed in Lloyd's Register of American yachts, whether these rules were sent to Mr. John S. Phipps?

A. They were sent to Mr. John S. Phipps, yes.

Q. When was that?

A. September 1933, as near as I can get at it—September 23, 1933—that is what our records show.

Q. How did you come to send one to Mr. Phipps?

A. As owner of the Iolanthe, and listed in Lloyd's.

Mr. Matteson:

I offer the rules in evidence.

They are marked Libelants' Exhibit 24.

A. (Continuing) Beyond that—to go on: I have also been, for some years, a member of the Committee on Fire Protection Regulations for motor craft of the National Fire Protection Association, one of the committees which drew up the 1937 rules.

Q. Were there also some rules gotten up by that Committee and published prior to 1937?

A. Yes.

Q. What is this that I hand you?

A. This is the 1930 edition, and I think there was an edition back of this again.

Q. Then the edition of these rules, which was in effect in 1935, would be this edition of 1930, is that right?

A. That is right.

Q. And this document you hand me is the set of regulations covering marine fire hazards for internal combustion engines, issued by the National Fire Protection Association in 1930?

A. Right.

Mr. Matteson:

I offer it in evidence.

Mr. Underwood:

I object to this document on two grounds: In the first place, it is not the original 1930 rules but is a re-print and is not complete. I also object to this document, as well as Exhibit 24, on the ground that they have no force of law and are merely the thought of certain unofficial individuals, gratuitously published without any binding effect.

It is marked as Libelants' Exhibit 25.

Q. I take it, Mr. Wright, that these two sets of rules, Libelants' Exhibits 24 and 25, are issued by different authorities, is that right?

Mr. Underwood:

I object to the question as leading. I don't like to object to the form of the question, but inasmuch as it contains the word "authorities", I object to it on that ground.

Mr. Matteson:

By different organizations—I will put it.

A. Yes. The National Board adopted, in many cases, the suggestions or rules, or whatever it is, that are gotten up by the National Fire Protection Association—they go into oil-burners and all sorts of stuff—and as far as of-



ficial is concerned, there is no better authority in the world than Hutson or Willis or Booth as Chief Engineer.

Q. Who is Mr. Booth connected with?

A. He is Chief Engineer of the National Board of Fire Underwriters.

Q. Can you tell us to what extent these rules that you referred to first (Libelants' Exhibit 24) are recognized by various people?

A. Why, that is the basis—those rules are the basis of all my work, and they are subscribed to by—twelve of the leading insurance companies, my clients, push that work under those rules.

Q. Is compliance with these rules required by those companies, do you know?

Mr. Underwood:

I object to that.

A. It is required wherever they can get it—a great many boats are turned down when they won't comply with them.

Q. These rules (Libelant's Exhibit 24) and the statements made in the cover letter, and the letter of July 28, 1931, which are attached—what is your opinion of those rules with respect to their necessity?

A. The very fact that boats equipped and run under those rules, except in cases of gross carelessness, don't have accidents, gives my opinion.

Mr. Underwood:

I move to strike out that answer on two grounds: In the first place it is not responsive, and in the second place there is no foundation for the witness's assertion of fact.

Q. What I am getting at, Mr. Wright, is this: Do the statements contained in this Libelants' Exhibit 24 repre-



sent your opinion with respect to the requirements of safety on gasoline yachts?

Mr. Underwood:

I object to that on the ground that it is not the proper way to elicit any witness's opinion, and on the ground that, as a hypothetical question, no facts are given the witness.

A. Absolutely. As I drew the original rules up, Mr. Hutson added some technical points and edited and signed them. I think it is pretty good evidence of my opinion, based on years of experience with loss cases and inspections for a number of insurance companies.

Q. I don't want, necessarily, to make you repeat on the record all that you have said in this document, Libelants' Exhibit 24, but I would like to ask you a few questions about the statements in this document, so that you can explain to us about them. I Notice that one statement here is that "Only 3 percent of gasoline fumes mixed with air make a moisture that may be exploded." Is that a fact, do you know?

A. I can bring you the tables of inflammable liquids, gotten up, I think, by the National Board or the National Fire Protection Association, which is an official register which will back that.

Q. What can you tell us about the explosive character of gasoline?

A. Gasoline is heavier than air and sinks to the bilges of the boats.

Mr. Underwood:

I object to this on the ground that the witness has not been qualified.

Q. You are referring to gasoline fumes now?

A. Yes.

Q. How much explosive power is there in gasoline?

Mr. Underwood:

Same objection all the way through.

A. Well, based on information obtained from the National Board—

Mr. Underwood:

I object to it on the ground that it is hearsay.

A. (Continuing) a pint of gasoline has a potential explosive power of about ten pounds of dynamite, or, as I put it in some of my previous circulars: A teacupful—half a pint—has a potential explosive power of five pounds of dynamite.

Q. If you have a quantity of liquid gasoline, which is turned into gasoline fumes, can you tell us whether or not there is a considerable increase in volume?

A. Yes.

Q. And if 3-per cent of gasoline fumes mixed with air will make an explosive mixture, is it a fact that only a very small quantity of gasoline will create a serious explosion hazard?

A. Absolutely.

Q. I notice that you say in these regulations that "Not a drop of gasoline or a gasoline vapor should be allowed to get into the engine compartment". What is the importance of that?

A. To prevent explosion.

Q. And secondly, I notice that you say that "No spark or flame should be allowed in the engineroom that can be avoided"—what is the importance of that?

A. To prevent explosion.

Q. And I notice that your third point in these rules is that "All engine compartments should be so ventilated that all vapors or gases which may have gathered there may be quickly removed". What is the importance of that?

A. To prevent explosions. The methods used on a tanker will illustrate that.

Q. What do you mean by the methods employed on a tanker?

A. Ventilation by various methods. We simply, in those rules—we simply try to illustrate a method to bring circulation through the bilges of a boat to remove whatever gasoline fumes may lie there.

Q. I notice that you say here that "Filling pipes to gasoline tanks must be on the outer deck", and that "Vent pipes to gasoline tanks should lead outside the hull". Why is that?

A. Because, previous to those rules, a great many installations had a deck plate on deck or in the cockpit, and the tank was below that with another plate. They took off first the top plate—the deck plate—and then removed the plate in the top of the tank, inserted a funnel and started to fill your tank. The outcome was that not being able to check carefully the amount of gas that went into the tank, the tanks overflowed, the gasoline went into the bilges and the insurance companies paid the losses.

Q. Aside from the spillage of gasoline—leakage of gasoline—would there be a danger in that practice?

A. Also a danger in that practice from the fumes from the tank. As the gasoline went into the tank, the fumes would flow out around the funnel and into the boat, and eventually down into the bilges.

Q. You spoke of gasoline being heavier than air. What happens when the gasoline vapors are pushed out into the hull of a vessel in that fashion?

A. They lie there unless removed.

Q. Do such vapors remain in the bilges, or are they apt to be carried through the boat?

Mr. Underwood:

Objected to, as a hypothetical question the facts are not given, and without the facts the answer is of no value in this case.

A. In regard to that, it is thoroughly well established that vapors do go through the boat, and float astern, if they have a chance, through the bilges—there is no question about that.

Q. Is there or is there not a tendency of such gases to disseminate through the air?

A. No, they are heavier than air.

Q. Do they mix with air?

A. Sure they mix with air, that is what makes the explosion.

Q. I notice here that you say that "Indicating devices on tanks shall not consist of glass gauges"—what is the reason for that?

A. On account of the liability to be broken and the leak from the joints.

Q. I notice that the next thing you have down here is that "All outlets for drawing gasoline for any purpose whatsoever be prohibited in the engineroom"—what is the importance of that?

A. The minute you pour gasoline in a confined space, it is liable to bring on trouble.

Q. Why is that?

A. Because it can't get out, it generates vapors which are explosive.

Q. The pouring of gas does that?

A. The pouring of gas, sure, I have had case after case of that.

Q. What importance do you attribute to this particular regulation?



A. The utmost importance. We do everything we can to prevent any pouring of gasoline below deck—any filling of tanks—auxiliary tanks—the pouring of gasoline below decks is absolutely dangerous.

Q. I notice here that another paragraph says that "All switches and fuses be placed outside the engine compartment, and on large boats where it is desirable to have all equipment in the engineroom, switches and fuses and every spark-emitting device should be enclosed and located at least four feet above the floor"—what is the importance of that?

A. Well; as the gasoline fumes fill up in the bilge, they rise, and we endeavor to have no possible spark that can ignite them.

Q. Are open switches—that is switches that are not enclosed—a hazard in that respect?

A. Absolutely.

Q. And why is that?

A. It will produce a spark which may ignite the gas fumes.

Q. I notice here that you say that "Drip collectors should be well fastened in all carburetors"—why is that?

A. To prevent the leakage from carburetors getting into the bilges.

Q. How much of a hazard is that?

A. Any gasoline that gets into the bilge is a potential hazard.

Q. I meant how likely is it that there will be any leakage from a carburetor?

Mr. Underwood:

I object to that on the ground that, as a hypothetical question, the facts are not given.

A. Various causes. If it happens to be a gravity feed, and the float feed in the carburetor has a little sand or grit or something underneath the valve, that will leak



down through the carburetor, and the carburetor will fill, and we want something to catch it.

Q. I notice that in that connection you say, "Openings should be properly screened with 40-mesh brass"—that relates to the drip collectors?

A. Yes, the same as the old Davy safety lamp.

Q. Just explain that to us—what is that—I mean what is the effect of the mesh?

A. It keeps the gas from getting into the flame.

Q. Or keeps the flame from getting into the gas?

A. Yes.

Q. The Davy safety lamp that you speak of—that is the sort of thing that miners wear in the mines, is that it?

A. Yes, that is a good many years old.

Q. What is the principle of that—of having the mesh over it—will flame pass through it?

A. Flame will not pass through it.

Q. I notice that you say here that "There should be a cut-off valve at each tank and at each carburetor"—what is the importance of that?

A. To cut off the gas quickly in case of necessity.

Q. What effect does that have on possible leakage?

A. Well, to explain more carefully: Your tank and carburetor may be at some distance from each other. Now, if the carburetor is leaking or needs quick repairs, you naturally want a valve close to it which can be turned off quickly.

Q. What is the importance of that when a boat is laid up?

A. When a boat is laid up, both valves ought to be turned off—everything ought to be turned right off at the tanks, as close as you can get, but that ought to be done in every case. I never stop for any length of time—my own boat—that I don't cut the gas right off at the tank. I have had cases—to bring that out—I have had cases using a certain type of carburetor, which has a check valve on

the air intake, and backfire has occurred and blown the end of the carburetor right off, and through being unable to get at the valves, burned and sunk. I know of two cases of that.

Q. Passing to the next point: I notice that you say that "Three-inch or larger ventilating pipes running all the way to the bilges should be placed in all four corners of the engineroom"—what is the importance of that?

A. That is to give a scouring effect to remove the heavy gasoline vapors which may lie in the bilges.

Q. I notice that you also say, "No ventilation above, either at deck or sides, will remove these vapors"?

A. Correct.

Q. Why is that?

A. Because they don't have that scouring effect, gases being heavier than air, they lie in the bilges and these ventilators that go to the deck or ports in the boat's side do not have that scouring effect.

Q. In other words, they don't ventilate the bilges?

A. They don't remove the gases that lie down in the bilges.

Q. In connection with your business, have you accumulated any data with respect to gasoline explosions?

A. Take everything that we can possibly get from the newspapers, reports from our companies, and where we can get hold of the facts of cases of explosions, investigate them and try to determine the cause.

Q. What is this document that you have handed me?

A. Oh, this was taken from all the stuff that we have—newspapers and all our reports—and put into a short concise record, just to show the danger of carelessness in using gasoline.

Q. This appears to be a summary of a series of incidents of gasoline explosions, is that right?

A. I think those are all gasoline explosions, possibly may be a stove explosion, but I am not sure.

Q. This is a summary of data on that subject that you have collected?

A. Right.

Mr. Matteson:

I offer it, in evidence.

Mr. Underwood:

I object to that on the ground that it is incompetent, irrelevant and immaterial, the facts not shown to be within the witness's knowledge.

It is marked Libelants' Exhibit 26.

A. (Continuing) Some of them are, if I remember correctly—some of them I investigated.

Q. What use have you made of this data sheet (Libelants' Exhibit 26)?

Mr. Underwood:

Objected to as irrelevant and immaterial.

A. Why, we give it out to show the danger of explosions, and make people more careful. We sent a copy to Mr. Ira Hand of the National Association of Engine and Boat Manufacturers—he is Secretary—but does not like the word "explosion", and shortly after he ordered seventy-five copies.

Q. How much of your time is now devoted to this matter of preventing gasoline explosions?

A. All my time.

Q. And for how long has that been?

A. Oh, for five or six years, probably more. In 1929 I was still surveying—of course, while I was surveying I was working on stopping explosions too—we all are, all the engineers of the companies.

Q. One other question I want to ask you: In connection with the lay-out of gasoline conveying pipes in a ves-

sel, is there any point to be made with respect to the number of connections that are incorporated?

A. Absolutely. Each connection is a potential source of leakage, and consequently as few connections as possible should be made on any line running from tank to carburetor. Recently I got up a schematic photograph showing the lay-out of a line from a tank to carburetor, including the drip pan—the drip pan having a pick-up pipe to the intake manifold. I submitted this to Mr. Henry B. Nevins, yacht builder, and his criticism on it was that it showed too many connections.

Q. Is this the plan (indicating photograph)?

A. Yes. Of course that was a schematic model.

Mr. Matteson:

I offer it in evidence.

Mr. Underwood:

I object to this on the ground it is incompetent, irrelevant and immaterial, and subsequent to the fire in question.

It is marked as Libelants' Exhibit 27.

Q. Does this show a typical drip pan under the carburetor?

A. That shows a drip pan that has just been gotten out in the last year—a covered drip pan which does away with the screen.

Q. This has a solid cover instead of the screen that is recommended in your rules?

A. Yes, that was something I schemed out about a year ago.

Q. Does gasoline have any characteristic that makes this matter of connections important?

A. Absolutely, leaky gasoline is liable to lead to trouble.



Q. I mean, is gasoline any more apt to leak than water, for instance?

A. Yes.

Q. Why is that?

A. Well, that is a technical question which I cannot answer.

Q. As a practical matter, can you tell us whether that is so?

A. As I have had about twelve years experience, I know it to be a fact, and we try to do everything we can to prevent the least seepage.

### Cross Examination.

By Mr. Underwood:

Q. You didn't send this Libelants' Exhibit 27 out and give it any publicity until February 21, 1939, isn't that right?

A. That is about right, it does not apply—

Q. This was just taken off a copy of your circular, wasn't it?

A. No, I made the model up in my house.

Q. I mean the photograph?

A. Yes.

Q. Have you that circular that you sent out this photograph with?

A. Yes.

Q. Look at the date of it—isn't it February 21, 1939?

A. Yes—it may have gone out under some other date.

Mr. Matteson:

There is no suggestion that this applies to the Seminoles, it is merely illustrative of the witness's testimony as to connections.

Q. I noticed that Mr. Matteson has called you captain two or three times—is there any significance to that?

A. That is simply a title of courtesy.



Q. You are now employed by twelve underwriters, you say?

A. Yes.

Q. Anybody else?

A. No, except private cases, going to Court and that sort of thing.

Q. Your work for the underwriters is to examine the hazards of gasoline-propelled vessels, and make suggestions for their elimination, is that right?

A. Right.

Q. How long have you been in the employ of the underwriters in that connection?

A. Well, I began this work in September, 1929.

Q. That was when your employment with the underwriters began in this connection?

A. Oh no, in this particular line. For twenty or twenty-five years I have been surveying and inspecting.

Q. Perhaps I didn't make my question clear: When did your employment with the underwriters in this anti-explosion work begin—1929?

A. 1929, as a specialty.

Q. It had gone on previous to that as part of your other duties?

A. Sure—as a surveyor of gasoline boats.

Q. A great deal of this work of yours is prospective in its nature, is it not—so far as the remedial suggestions that you make?

A. What do you mean by prospective?

Q. Having in mind future construction.

A. Well, future construction and alterations.

Q. You circularize the boat builders?

A. Yes.

Q. And your purpose is to show them how to build safer boats?

A. Yes.

Q. A great many of the things you recommend, I suppose you don't expect existing boats to follow, is that right?

A. No.

Q. Well, how about the construction of gas—

A. Just as our surveyors for our twelve companies can push it, they do it.

Q. I take it you mean that a great many boat owners refuse, because of the expense, to make the changes—all the changes that you recommend, isn't that so?

A. No, not a great many.

Q. Many of them do, don't they?

A. Many what—refuse to make changes?

Q. Yes.

A. I am just trying to think how many of our surveyors—they are the men that have to force this work.

Q. You don't know of your own knowledge then, is that right?

A. No, I don't see every installation, you know.

Q. How often do you get out on a boat yourself to make a survey?

A. You mean for inspection purposes?

Q. Yes.

A. Not very often nowadays, I used to do a lot of it.

Q. Lloyd's Register of American yachts is a pretty thick book, isn't it?

A. Yes.

Q. Have you any idea how many gasoline-driven yachts there are in there?

A. No, I think there were 1160 we circularized last year, if I remember, that were not in the previous Register the year before. But what I do do—

Q. Just answer my questions. There are some several thousand boats in Lloyd's Register of American yachts, aren't there?

A. Yes.

Q. You don't know, do you, of your own knowledge, how many of them have adopted those suggestions that you make from time to time?

A. No.

Q. Getting back to the nature of your work: These insurance companies for whom you have worked, insure against fire on yachts, don't they?

A. Yes.

Q. And they are paid a premium for that?

A. Yes.

Q. And they have to pay losses occasionally?

A. Yes.

Q. And the nature of your work is to minimize their losses so they will make a greater profit in their business, isn't it?

A. Yes.

Q. How big an office staff do you have?

A. Myself and a secretary now, but I can call on any of the surveyors of our Company.

Q. Who actually sent out this Exhibit 24 in 1933?

A. I would have to look back at my books and see who my secretary was. I have had my present secretary for about three or four years.

Q. You don't say you yourself addressed the envelope to Mr. John S. Phipps and put it in the mail box, do you?

A. No.

Q. Of course, you don't know whether he ever got it, do you?

A. No.

Q. As a matter of fact, you don't even know whether it was actually even mailed, do you?

A. Our records show it was.

Q. You didn't see it mailed, did you?

A. Probably not.

Q. This little booklet that has been marked Libelants' Exhibit 25—that is merely appendix D of the regulations, is it not?

A. Yes.

Q. You know, as a matter of fact, don't you, that these regulations put out in 1930 were specifically not retroactive, isn't that correct?

A. No, I wouldn't say so, because boats that were—that were changed on account of it—that had been built previous to those regulations—were changed on account of it.

Q. Isn't it a fact that the regulations on their own terms were specifically not retroactive?

A. If by retroactive you mean only on boats that were to be built—

Q. Isn't it a fact that these regulations of 1930, by the M F P A were not intended to apply as regards matters of construction to boats already in existence?

A. They were made to apply so that boats could be altered and made safe.

Q. You recognize that this is merely Appendix D of the regulations?

A. Yes.

Q. Are you familiar with the regulations themselves?

A. Surely.

Q. Isn't it a fact that on page 3 of the regulations at the very beginning, this provision is made—and I quote, "No provision in these regulations is to be retroactive as regards construction"?

A. I don't think you have interpreted it the right way.

Q. Isn't it a fact—isn't that what the regulations say?

A. It so reads that way.

Mr. Underwood:

I ask to have the regulations marked for identification.

They are marked as Respondent Phipps Exhibit 3 for identification.

A. I know it is not so understood.

Q. I show you Respondent Phipps Exhibit 3 for identification, and I will ask you to read out loud that provision.

A. (Reading) No provision in these regulations is to be retroactive as regards construction."

Q. Now, that think from which you have read, you will concede, will you not, is a copy of the 1930 regulations governing marine hazards by the National Fire Protection Association—isn't that right—isn't that what you have read from?

A. Yes. That interpretation was never intended that way.

Mr. Underwood:

I move to strike that out as not responsive to any question of mine.

Q. In answer to one of Mr. Matteson's questions, you said, in reference to Libelants' Exhibit 24, your rules, that the insurance companies required compliance whenever they could get the owners to comply?

A. Yes.

Q. I take it that you mean by that, that owners do not always comply with your rules, isn't that so?

A. Well, the absolute facts are, where they won't comply, generally companies don't want the boat.

Q. You don't mean to say companies refuse to insure boats unless they comply with these rules?

A. In many cases, yes.

Q. But not universally?

A. No.

Q. It is quite possible for a boat owner to get insurance, notwithstanding he doesn't comply with your rules, isn't that so?

A. It is possible in some cases.

Q. How many cases there are of gasoline-propelled boats that are insured, although they hadn't complied with your rules, I don't suppose you know, do you?



A. No, nobody knows—they force that as far as possible.

Q. That means as far as the boat owner is willing to go to the expense of adopting your suggestions, isn't that what you mean?

A. No. As I said before, there are many cases where they refuse to take the boat if certain things aren't done.

Q. But they don't refuse insurance in all cases, do they, just because your rules are not complied with?

A. Not in all cases.

Q. And how many of one class and how many of the other you don't know, do you?

A. No, no one does.

Q. You have told us something about the explosive qualities of gasoline fumes. Just what do you mean by gasoline fumes—I think that was the word that was used.

A. Well, the gases that come from gasoline.

Q. Do you mean by gasoline fumes, the same thing as gasoline vapor?

A. Yes.

Q. How can that be exploded, Mr. Wright?

A. Spark.

Q. Anything else?

A. Fire.

Q. Your pipe, I suppose?

A. Yes.

Q. A match?

A. Yes.

Q. Any fire?

A. Any fire.

Q. In this Libelants' Exhibit 24, there isn't anything which forbids the use of knife switches in the engineroom, is there?

A. Yes, there is.

Q. All right, suppose you read the provisions that covers that.

A. (Reading) "All switches and fuses be placed outside of engine compartment".

Mr. Matteson:

Go ahead, read the rest of it.

A. (Continuing) "On all large boats, where desired to have all equipment in engineroom, switches and fuses and other spark-emitting devices should be enclosed and located at least four feet above the floor".

Q. That is all you find in there on that subject?

A. I think that is all in here—yes.

Q. Now, that does say, does it, that knife switches shall not be used?

A. No.

Q. It does not say they shall not be used in the engine-room, does it?

A. No, but if they are they should be enclosed.

Q. And it does not say that they shall be enclosed or must be enclosed, does it?

A. No.

Q. Don't you know as a matter of fact, that there are a great many boats—gasoline-driven boats—that have open knife switches in their enginerooms today?

A. Not so many today.

Q. Don't you know as a matter of fact, Mr. Wright, that it is only the Coast Guard and the Navy Department that uses explosion-proof switches in the engine-rooms?

A. No, I do not—I know to the contrary.

Q. Isn't it a fact that the 1930 regulations of the National Fire Protection Association do not forbid the use of open knife switches in the engineroom of gasoline-driven boats?

A. (Referring to Libelants' Exhibit 25) I haven't looked at this book for a long while—that is the old regulations—(reading) "Accessories such as switches, sockets, etc., shall be standard types for current to be carried. Circuits shall be protected by National Electrical Code fuses of suitable capacity for wire used. A manual master cut-out switch

shall be installed as close to the battery as practicable." (Note: This will be found on page 56 of Respondent Phipps Exhibit 3 for identification, and on page 13 of Libelants' Exhibit 25). And here is something that may cover that, on page 12, Section 11, paragraph (a): "Electrical installations operating at potential of over 32 volts shall be in accordance with Appendix B (A. I. E. E. Marine Rules). Those carrying 32 volts or lower shall conform to following."

Q. Do you know whether the Appendix B of the "A. I. E. E. Marine Rules forbids the use of open knife switches in the engineroom?"

A. No, I do not.

Q. Don't you know, as a matter of fact, they do not?

A. I don't know.

Q. How many of the several thousand gasoline-driven boats that are named in Lloyd's Register of American yachts have you been on in the last five years?

A. Oh, I couldn't tell you.

Q. Give me your best estimate.

A. I couldn't tell you, really, because some years I am on a lot of them, and some years I don't get away from the office. The last year or two I have hardly been away from the office, only on special occasions.

Q. Have you been on as many as twenty-five in the last five years?

A. Oh yes.

Q. Fifty?

A. I should estimate fifty at least.

Q. What is the maximum number that you fairly think you have been on in the last five years?

A. I couldn't give you any—because as I go through the shipyards—

Q. All I want is your best estimate of the number of those vessels you have been on in the last five years.

A. Oh, maybe three or four hundred.

Q. How many of those had explosive-proof switches in the engineroom?

A. I couldn't tell you offhand.

Q. How many had open knife switches in the engineroom?

A. I couldn't tell you offhand.

Q. And of course, what the others had that you weren't aboard of, you don't know?

A. No.

Q. According to my notes, you said that the presence of an outlet in the engineroom, for the drawing off of gasoline, is a thing you need to have, because when you are drawing off gasoline into a can or something of that sort, it generates a vapor, is that correct?

A. That is correct.

Q. Is that your reason for that rule?

A. Absolutely.

Q. That rule is aimed at the practice of pouring off gasoline in the engineroom—free gasoline?

A. Absolutely.

Q. That is the purpose of it?

A. Yes.

Q. How many hundred boats, did you say you were on in the last four years?

A. Three or four hundred.

Q. How many of them had their switches in the engineroom, and how many some place else?

A. I couldn't tell you offhand.

Q. You don't know what proportion?

A. No.

Q. You don't know whether it is general—of your knowledge—whether it is general to have switches outside the engineroom or not?

A. More and more.

Q. It is increasing?

A. Yes.



Q. You don't know even today whether the majority of the boats have the switches outside of the engineroom?

A. They probably have.

Q. You don't know, do you?

A. No.

Q. Five years ago, it was not at all customary to have the switches outside of the engineroom, was it?

A. I think it was.

Q. Five years ago?

A. Yes, five years ago.

Q. That practice was just beginning in 1935, wasn't it?

A. No—1929.

Q. What practice do you say began in 1929?

A. Having switches outside of the engineroom—that is when we first began to push it.

Q. You first began in 1929?

A. That is when we first took it up.

Q. And on new constructions after that, you did your best to get them to put switches outside of the engineroom?

A. On old construction where our surveyors took the risk.

Q. How many boats can you name that between 1929 and 1935, took out their switchboard from the engineroom and located it some place else?

A. I am not a surveyor.

Q. How many can you name?

A. Not many offhand, because that is outside of my jurisdiction.

Q. You don't know whether it was done on old construction or not, do you?

A. Yes, I do, because I know our surveyors are having it done.

Q. On what boats was it done between 1929 and 1935?

A. I don't know.

Q. On how many boats was it done?

A. Old boats, you mean?



- Q. Yes.
- A. I couldn't say.
- Q. On what percentage of the boats was it done between 1929 and 1935?
- A. Well, wherever the—
- Q. Do you know?
- A. No, personally I don't know, I didn't make the survey.
- Q. Are you an electrician?
- A. No.
- Q. You are really an investigator of explosions, aren't you?
- A. Yes.
- Q. You try to ascertain the cause?
- A. Yes, sir.
- Q. And every time you do ascertain the cause, you suggest something that will stop that particular kind of explosion?
- A. Yes.
- Q. And nothing short of perfection will satisfy you, is that right?
- A. Absolutely.
- Q. You have told us about drip collectors—I am speaking about drip collectors in the carburetors.
- A. Yes.
- Q. If the carburetor does not leak, they perform no function, do they?
- A. No.
- Q. Their purpose is to take care of the situation where a carburetor leaks, isn't that right?
- A. Yes.
- Q. And if a carburetor does not leak, you don't need a drip collector, do you?
- A. We do not—no, I will withdraw that answer—we need a drip collector in every case.
- Q. Because the carburetor might leak?

A. Because even the engineers of the biggest manufacturers of carburetors allow that in some cases any carburetor may leak.

Q. For the purpose of this discussion, Mr. Wright, I want you to assume that the carburetor that we are talking about does not leak. If it does not leak, a drip collector serves no purpose, does it?

A. At that particular time, no.

Q. In answering Mr. Matteson's questions about the purpose of the shut-off valve in the gasoline line, I think you said that you felt there ought to be one at the tanks and close to the carburetor?

A. From my experience.

Q. Is that right?

A. Yes, from my own experience.

Q. And that is based on one or more instances where the carburetor has leaked and there has been need to shut off the flow of gasoline quickly without taking the time to go the distance to the tank and shut it off at the tank valve, is that correct?

A. Yes.

Q. If that situation does not arise, that valve does not come into play, does it?

A. That is likely to arise in any case.

Q. You mean a leaky carburetor?

A. Yes.

Q. But apart from a leaky carburetor, that need does not arise, does it?

A. If your carburetor wasn't working properly and you wanted to take it apart, even if it didn't leak, it has to be there.

Q. Those are the two reasons, is that right?

A. There may be other reasons, I am trying to think.

Q. Do you think of any now?

A. No, not offhand. There was one that occurred recently that I was trying to locate.

Q. You mean something else happened recently that might give you a third reason?

A. Yes.

Q. But you can't now think what it was?

A. No.

Q. You have told us all the reasons you can now think of?

A. Yes.

Q. Do you say that it is customary today for gasoline-driven vessels to have ventilators that lead down into the bilges?

A. Yes.

Q. What percentage, if you know, of the yachts listed in Lloyd's American Register have such ventilators?

A. Well, I couldn't say, but I can answer it a different way.

Q. Go ahead, give me your answer.

A. Since 1929, all the larger Chris Craft and the Matthews, Acker, A. C. F., Consolidated, Dawn, Elco—I can't think offhand—but the majority of the big boat builders all ventilate their bilges today and have for years back.

Q. In their new construction?

A. Since 1929.

Q. In their new construction?

A. Yes.

Q. Can you name one boat that was in existence in 1929 that has extended its ventilators down to the bilges when they didn't extend there before?

A. In 1929 there were a few of them that had any bilge ventilation.

Q. Can you name one boat that was in existence in 1929, that has extended its ventilators from the deck-head down to the bilges?

A. I know there are a number of them have, but to give you the names—I used to know the name of every boat that I have been on, but nowadays I am out of the inspection service—but I know there are a lot of them.

Q. You are brought here, Mr. Wright, to testify, presumably, as an expert in this case, and I want to find out what you know of your own knowledge. Now, can you name one?

A. Back to 1929?

Q. Yes.

A. No, I can't, but I know they were done, I have seen them, of my own knowledge I have seen them.

Q. How many have you seen?

A. Oh, dozens of them.

Q. How many?

A. I couldn't say offhand, but dozens of them.

Q. What percentage of the boats that were in existence in 1929 have been so altered?

A. Oh, I suppose—

Q. Do you know?

A. As I say, I have not seen them.

Q. I want to know what you know—not what you heard or what somebody has told you—but what you have seen.

A. Well, beginning in 1929, there were very few that had bilge ventilation, beginning at that time. I have been yachting ever since—I have gone around to see this side deck ventilation—I didn't go on board a lot of them, but where they had those side deck ventilators, that they didn't have in 1929 when we first began this propaganda, we could pretty well assume that the majority of those boats it extended to the bilge.

Q. That is your assumption?

A. Yes.

Q. I want to know what you know.

A. That is all I know about it.

Q. You don't know how many cases it has been done; do you?

A. No, I know ventilators has been put on.

Q. You don't know whether it has been done generally or not, do you?

A. Not by being on board the boat, no.

Q. If you have cross ventilation in an engineroom—that is an engineroom with a window on either side of it—do you say that the air that moves through that engineroom will not bring up the gasoline vapor in the bilges?

A. So it has been proved.

Q. You mean it will not bring out any of it—leave it down there undisturbed?

A. I won't say undisturbed, because there might be something to deflect that air, but as a rule that side ventilation don't work.

Q. Don't you mean this: That the kind of ventilation you suggest is better than cross ventilation?

A. No, I don't mean that.

Q. It is your testimony that this gasoline vapor will stay down there in the bilges in spite of cross ventilation through the windows?

A. So it has been proved by our loss cases.

Q. You base that testimony upon the fact that in some instances there has been a gasoline vapor where there has been cross ventilation, but not the kind you recommend?

A. Exactly.

Q. That is the sole basis?

A. What is the sole basis?

Q. Is that the sole basis of your testimony?

A. The basis of my testimony is that we have had explosions under those circumstances.

Q. Now, take the converse of that situation: Do you know how many times there has been gasoline vapor in the bilges that has been dispelled by cross ventilation through the windows?

A. I have never come across a case.

Q. Because there hasn't been any explosion in such a case, isn't that the reason?

A. You have got to get—

Q. Isn't that the reason?



A. You have got to get a certain mixture of air and gasoline—the proper proportions—and a spark to make an explosion.

Q. And unless those two things happen, you haven't bothered about it much, have you?

A. Unless what?

Q. Unless you get that combination of circumstances, resulting in an explosion, you haven't bothered about it much?

A. Sure I have bothered about it, because I tried to prevent that very thing—we don't know when that thing will occur.

Q. Do you know how many times there has been an explosive mixture of gasoline vapor in the bilges that has been dispelled by a current moving in the engineroom from one window on one side and a window on the other side being open?

A. I don't believe such a thing can occur.

Q. Did you ever conduct any experiments to see?

A. No, but we have had explosions that did occur under those circumstances.

Q. But how many times the explosive mixture of vapor has been there and has been dispelled by such ventilation before any spark occurred, you don't know, do you?

A. I don't believe it can be dispelled, and I have—

Q. Tell me this then: Isn't it a fact that the sole basis for your belief is the fact that such explosions have occurred?

A. Naturally, before I went into this work—

Q. Just answer my question, please.

A. Put your question.

Q. (Repeated) Isn't it a fact that the sole basis for your belief is the fact that such explosions have occurred?

A. No, it is not the sole basis by a long shot.

Q. Have you conducted any experiments to see what happens?

A. With gasoline down there, yes.

Q. When you have cross ventilation?

A. Yes, I have been down there and found it out.

Q. Tell us what you have done.

A. I have gone down there and smelled it—you can smell gasoline.

Q. Under what circumstances?

A. When the windows were open both sides; and the National Board backed me on that sort of thing.

Q. Was it an explosive mixture?

A. If it had been an explosive mixture, and any spark around there, it would have gone off, you can't tell by smelling whether it is an explosive mixture or not, but the very fact that gasoline vapors are there brings a hazard right away, and the data from the National Board of Fire Underwriters—

Q. Don't tell us what their data shows, I am not interested in that, I haven't got their data here to cross-examine, I just want what you know. What the effect will be on gasoline vapor in the bilges, where you have windows on either side, will depend very largely, will it not, on the strength of the wind that will blow through and how it is deflected down towards the floor?

A. I don't think you will get anything from that cross ventilation.

Q. You don't think you will get a thing?

A. Very little.

Q. Then you think you will get some?

A. I don't.

Q. Then what made you say very little?

A. Well, you can put it the other way then.

Q. You say that in cross ventilation you don't get any of the vapor up out of the bilges?

A. I don't say any.

Q. What is your testimony?

A. I say the cross ventilation, for practical purposes, is no use in trying to prevent an explosion.

Q. Do you mean by that, that you don't, with cross ventilation, get any of that vapor out of there?

A. As I said before, the cross ventilation is of no practical use in trying to remove those vapors from the bilges.

Q. I would like you to answer my question.

A. Whether it removes any or not, I don't know.

Q. You said something about the fewer connections you have in a gasoline line, the better it is—your reason for that, I take it, is the more connections you have the more chance of leakage there is?

A. Absolutely.

Q. Of course, if you don't have any leaks it does not make any difference, does it?

A. No, because the connection is always a potential cause of danger.

Q. We are talking here about a particular fire. If there wasn't any leakage in the gasoline lines on this particular boat, then it does not make any difference how many connections they had, does it?

A. Well, I wouldn't say that, because I know a connection is always a potential cause of danger—I have had too many boats of my own.

Q. Our inquiry here today is not directed so much towards the potential dangers, as it is towards the cause of this particular event. Don't you agree with me that if there was no leak in the gasoline line from any connection, then the fact—if it is the fact—that she had more connections than your rule book recommends, didn't have anything to do with the case?

A. No, I don't agree with you, because while it might show no leak, vibration would bring a leak which might stop afterwards.

Q. Your answer leads me to believe that you have refused to adopt my assumption—the one that I asked you to make. I have asked you to assume that there was not, in fact, any leak from any connection. Now, if that be

the fact, then the mere fact that she had more connections than you might recommend, didn't have any causal relation to this explosion and fire, isn't that so?

A. Well, if it didn't leak, naturally it wouldn't have any connection with your fire.

#### Re-Direct Examination.

By Mr. Matteson:

Q. Mr. Wright, you have referred, particularly, of course, to your campaign since 1929 for safety in gasoline vessels. Do you want us to understand that prior to 1929 none of these precautions that you have suggested were taken by anybody?

A. I don't want you to understand anything of the sort, because in 1923 I got up a pipe leading from the air intake of the carburetors up above the engine to prevent the ignition of explosive gases by backfire, and I carried on that campaign right along.

Q. Aside from your campaign, do you want us to understand that careful owners didn't take some of these precautions before that time?

A. No, I do not want you to understand anything of the sort, because there have always been men who have had common sense in using gasoline.

Q. Another thing you said was that you wouldn't be satisfied with anything less than perfection on a gasoline boat. Why is that?

A. Because I have seen too many poor devils who have been burned, I know what happened, and I have examined too many wrecks, and I have carried it out on my own boat for years—I had one of the first gasoline engines that was made.

Q. In other words, you are dealing with a very serious hazard?

Mr. Underwood:

I object to that as leading. Let the witness testify:

A. Yes, I knew nothing about gasoline engines when I started. I bought a little one and it took the gas off the top of the tank with no precaution against explosion except some little bits of wire gauze shoved in the pipe from the tank to the engine.

**Re-Cross Examination.**

By Mr. Underwood:

Q. Have you ever been aboard the Seminole?

A. I don't know, because you can't—for years I could keep those names in my mind, but when it gets into the thousands and thousands—I don't know—the name sounds familiar to me—she was a big—as I remember—I have seen her, I think—big sort of a houseboat, but beyond that I couldn't say.

Q. At the present time, you don't remember whether you were ever aboard of her or not?

A. No.

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United States District Court Southern District of Florida,  
Miami Division.

Charles Coryell, et al., Libelants,  
against

George J. Pilkington and John S. Phipps, Respondents.

In Admiralty No. 122-M-Adm.

Further depositions taken on behalf of the Libelants,  
at the office of Messrs. Bigham, Englar, Jones & Houston,  
99 John Street, New York City, March 14, 1939.



## Appearances:

Messrs. Batchelor & Dyer,  
 Messrs. Bigham, Englar, Jones & Houston, (Mr. Shaw)  
 for the libelants.

Messrs. Loftin, Stokes & Calkins,  
 Ray C. Alley, Esq.,  
 Messrs. Burlingham, Veeder, Clark & Hupper, (Mr.  
 Clark) for John S. Phipps.

It is stipulated that the testimony may be taken by a stenographer, signing, filing and certification being waived, stenographer's fees to be taxable.

1431 RUTH E. LaBAR, being duly sworn and examined as a witness for the libelants, testified as follows:

By Mr. Shaw:

Q. What is your address?

A. 35 East 30th Street, Manhattan.

Q. Miss LaBar, are you now employed by Mr. E. D. Wright of 90 West Street?

A. No, sir.

Q. Were you ever in Mr. Wright's employ?

A. Yes, sir.

Q. Can you state when?

A. I worked for Mr. Wright temporarily, for approximately a week and a half, during the period from September 16th to September 25, 1933.

Q. And in what capacity?

A. As a stenographer, during his secretary's vacation.

Q. What, generally, did your duties consist of?

A. Taking dictation from Mr. Wright, general routine, sending out circular letters and so forth.

Q. I show you Libelants' Exhibit 24, and ask you if you can identify that.

A. Yes, sir.

Q. What is it?

A. A circular letter that was sent out to the yacht owners whose names were taken from the Lloyd's of London Yacht Owners, I believe for the year 1933.

Q. And did you yourself send these circulars out?

A. Yes, sir.

Q. Can you state to whom you sent these circulars, in a general way?

A. Before Mr. Wright's secretary left, she identified a part in the book where I was to start.

Q. Is this the book—the one that I now hand you?

A. Yes, sir.

Q. Can you identify in this book where you started on the names?

A. Yes, sir.

Q. Where does it start?

A. Under the name of "Patton, J. L".

Q. On what page?

A. Page 571.

Q. Can you state how far down the list you went in sending out circulars?

A. Well, approximately—I would say before and including the alphabet—or the letter "R".

Q. Would that include all the names listed under "P"?

A. Yes, sir.

Q. And more specifically, does that include John S. Phipps?

Mr. Clark:

I wish you would allow the witness to do the testifying.

Q. State whether or not it does include that name?

A. The list includes the name of John S. Phipps.

Q. Can you state whether or not you sent a copy of this Libelants' Exhibit 24 to John S. Phipps at the address stated in this register?

A. To the best of my knowledge I did, as indicated by my check.

Q. You recognize your check mark, do you?

A. Yes, sir

Mr. Shaw:

I would like to offer this particular book that we have been referring to for identification, and I would like to confine it, if it meet with your approval, to this particular page.

Mr. Clark:

No, that does not meet with my approval, as I propose to look through the book and compare the checks in the book on cross examination.

Mr. Shaw:

Well, I will offer the entire book for identification.

It is marked as Libelants' Exhibit 28 for identification.

Q. Will you tell us, Miss LaBar, what the mechanics were in sending out these circulars similar to Libelants' Exhibit 24.

A. Yes. On the first sheet I inserted the date and the name of the person to whom the series of letters were to go—name and address—and made an envelope for them, and there would be quite a number at a time, and I would give them to Mr. Wright for his signature, and they were signed by Mr. Wright, sealed and mailed by me personally.

Q. Where did you mail them?

A. In the chute in the building in which Mr. Wright was, at that time—90 West Street.

Q. Will you state whether or not you stamped the envelopes.

A. Yes, I stamped them.

Q. Did the envelopes contain a return address?

A. Yes, sir.

### Cross Examination.

By Mr. Clark:

Q. How many times have you worked for Mr. Wright?

A. Just during the period that I specified, temporarily.

Q. From September 15th to September 25, 1933?

A. Yes, sir.

Q. That was the only time?

A. Yes, sir.

Q. How did you get the position?

A. Through an agency.

Q. Did you know his secretary?

A. No, sir. I met her just before she left for her vacation.

Q. Did she relieve you when she came back—did you then terminate your position there?

A. Yes. I didn't see her after she returned. I left, and I presume she came in the next Monday—that I don't know.

Q. You only saw her on the one occasion?

A. That is right.

Q. September 15, 1933—what day of the week was that?

A. I am afraid I don't recall that far back.

Q. You seem to recall the day that you left, don't you?

A. You mean the day?

Q. You referred to the fact that his secretary came back on Monday and you didn't see her.

A. I am only assuming that the vacations are a period of—I know that I went to relieve Mr. Wright's secretary during her vacation—but I couldn't definitely say when

she left and when she got back. However, I never saw the girl but once in my life, and I met her just before she left.

Q. You said you assumed she came back on Monday, is that right?

A. I am assuming that that was vacation time.

Q. Then your last day was what—Friday or Saturday?

A. Apparently.

Q. What was your first day?

A. Back in 1933 I wouldn't be able to say. I know I was sent there, and during that period I was there, but the day of the week I am not able to give you.

Q. You couldn't remember what day of the week it was?

A. No, sir.

Q. Could you remember the day of the week you ended your arrangement?

A. No, sir.

Q. What was the first thing you did when you arrived there in the office to take over this temporary job?

A. I went about my duties as any secretary would—I just don't recall my very movements.

Q. What was the first time that your attention was called to this work you did in 1933, concerning which you are now testifying?

A. Just before the girl left on her vacation, she apparently had been working on the book, and she told me about where to begin, and to send the letters out as I found the time.

Q. But now I am asking you: When was your attention first called to this work that you did then—I mean now—to come here and testify. When were you asked to come here and testify, and your attention was called to this work you did back in 1933—when were you interviewed about it?

A. Today is what—

Q. Today is Tuesday, the 14th.



A. Friday.

Q. Last Friday?

A. Last Friday, that is right.

Q. Who interviewed you?

A. Mr. Starkey.

Q. And then from 1933—September 1933 until last week, Friday, March 10th—during that period from 1933—September until last Friday of this year—you had not had this in mind at all?

A. No, sir.

Q. This book which has been marked Libelants' Exhibit 28 for identification, Lloyd's Register of American Yachts, is for 1933, and this was the book that was in Mr. Wright's office at the time?

A. Yes, sir.

Q. Sometime between September 15th and September 25, 1933, is that right?

A. Yes, sir.

Q. Whose handwriting is this "Beg here" in the upper lefthand corner of page 571, if you know?

A. It is not my writing.

Q. You don't know?

A. It is the previous girl's writing.

Q. Whose handwriting is this "Acknowledged 10/- 19/33" on the first column of page 571, if you know?

A. I don't know.

Q. It is not yours?

A. No, sir.

Q. Whose handwriting is it here on page 571—the lower righthand corner marked "RFD—unclaimed"?

A. I don't know.

Q. It is not yours?

A. No, sir.

Q. There are some other handwritings in this book—are any of them yours?

A. No, sir.

Q. None whatever?

A. No, sir.

Q. Did I understand you to say that you went through the Rs in this book?

A. Well, that is pretty hard to say how far I went, I can't be definite on that point. I know that I sent a great number of them out and just where I stopped that I would be unable to say.

Q. By looking at this book, you can't tell where you stopped?

A. Not definitely, no, sir.

Q. The checks don't show you?

A. No, sir—not too definitely.

Q. How did you happen to fall upon this name "Patton"—"J. L. Patton" at the upper lefthand corner of page 571, as the name that you started with?

A. There is where it was my instructions to start, where it says "Begin here" at the top of the page, and I started from there.

Q. How do you know that was the place you began—you don't remember back all these years?

A. That part I remember, that she marked in the book where I was to start.

Q. There is another "Begin here" in the book. I find one "Begin here" on page 567. Do you know that?

A. I remember there was a "Begin here" at the top of the page where I was to start.

Q. Well, there is a "Begin here" at the top of the page 567 also. So we have two "Begin heres" at the top of the page—one page 567 and one page 571. Are you able now to go back over these years and tell us which is your "Begin here"?

A. May I see it?

Q. Certainly. Here is one and here is another (indicating).

A. That appears to be the one that I started at.

Q. Referring to the one on page 571?

A. Yes, sir.

Q. Now, will you please tell me why that one appears to be the one that you started at.

A. Well, I don't know just what to say about that—I think there are things that can be recalled to you, particularly when you see them in writing. I am definite that she marked it at the time and it sort of shows up in my mind that I saw that and was instructed to start there.

Q. What day was it after you started with Mr. Wright—the first day was September 15th—what day was it that you sent off your first circular?

A. I am afraid I wouldn't be able to say just what day.

Q. Well, could you say whether it was very soon or a long time?

A. I can't answer that question.

Q. Doesn't it strike you as rather strange that the fifth name after "Patton", which is the one you say or that you think that you began with "Mr. A. J. Drexel Paul", the acknowledgment came on October 19, 1933?

A. An acknowledgment could come at any time afterwards, could it not?

Q. Yes, but it is a long time, is it not?

A. Why, not for a circular letter, I wouldn't say, myself having had experience with circular letters—right now I am doing that work—and we are getting replies way back, months.

Q. Would it strike you as being in accordance with what you would expect then to find that Mr. Walter E. Pitcher, on page 573, acknowledged on October 13th, and that Mr. Plumley, on the same page of this list of yacht owners on page 573, was acknowledged on October 13th?

A. The same answer applies.

Q. Isn't it rather singular that these letters, which you say that you sent out—it is fair to say that you sent some of them out during the week of September 15th, isn't it—that the acknowledgments are October 19, 1933—and I am now referring to those that are acknowledged—Octo-

ber 13, 1933, October 13, 1933—those are the ones that I have come to—you don't see any significance in the fact that the acknowledgments, where the date is given, are October 13th and 19th?

A. I still contend that an acknowledgment can come forth at any time for that type of letter.

Q. Let's take it that you are absolutely correct that it can—what would you reasonably expect?

A. I am afraid I don't understand your question.

Q. I am making a distinction as to what can be, what is possible and what is probable—it can be that an acknowledgment wouldn't come for six years—that is possible?

A. Yes.

Q. It is not probable, is it?

A. No, sir.

Q. Now, I am calling your attention to the fact that these circulars, which you say were sent out in September—between September 15th and September 25th—that the acknowledgments, as noted here, are October 13th and October 19th, and ask you if that isn't a long while for those acknowledgments to come in?

Mr. Shaw:

I object to this line of questioning as argumentative and speculative.

Mr. Clark:

There is going to be a lot more of it. Do you want to instruct the witness not to answer the questions, because there is going to be plenty more of it?

Mr. Shaw:

I have made my objection.

(No answer.)

Q. What does this check mark mean, Miss LaBar—what does that check mark mean in this book, Libelants' Exhibit 28 for identification?

A. A letter had been sent to that person.

Q. Did you put these checks on here—or some checks anyway you put in the book?

A. Yes.

Q. When did you put the checks in the book?

A. As I went along.

Q. Well now, just what does "As I went along" mean—does it mean when you first took up this Libelants' Exhibit 24 (referring to a form letter which I hold in my hand, the original having been testified to by Mr. Wright, and the original being somewhere in the mail between Florida and New York, and we are using this copy because the original is not here)—you have the book before you and you have the circular. Now, when do you put the check in—is it when you fill in the name?

A. Usually. I might deviate if I wrote a few and knew I had gotten to a certain point and was interrupted, I might go back and make a check mark, or might mark it as I went—that I can't be definite about.

Q. The check does not refer to the mailing—the check refers to the fact that you have filled in a certain person's name on the top of this—

A. Oh, no, that means they were mailed.

Q. That is not what you have just testified to.

A. For instance, I mean during the day I would know what ones I made out and mailed out on this certain day—I wouldn't come back the next day and make the check.

Q. You have testified you put the check in when you filled this name in on the circular letter.

A. Before it is mailed, naturally.

Q. Well, when?

A. During the course of making out the letters—addressing them.



Q. Yes, while you are addressing the letters you put that name down on this letter (Libelant's Exhibit 24)—you put the name down and then do you check it?

A. Usually.

Q. That was your practice, is that right?

A. Yes, sir.

Q. Then it was not your practice to wait and check when you mailed?

A. Not when the letter went out. It went out—if I made out ten in one day, they were checked and they were all mailed that day.

Q. But when you once filled it out and checked it, you assumed that that letter had been mailed—the checking—

A. Quite definitely that it has been mailed.

Q. The checking referred to the filling out and not to the mailing, isn't that right?

A. Yes, that is right.

Q. Did you ever check any twice?

A. Possibly.

Q. What would two checks mean?

A. I am afraid I couldn't say now what it might mean.

Q. Could it be that one check is that you are filling out a circular, and the other check is that you are mailing it?

A. No, that wasn't the procedure.

Q. What is the meaning of these names that you have two checks against?

A. It is possible that the book has been used since 1933, and I have no knowledge of what any checks might be—any other checks.

Q. And on no occasion did you put more than one check on a name, is that right?

A. I couldn't say to that.

Q. You have done other work like this, Miss LaBar?

A. I sent out circular letters, yes, sir.

Q. And it is not unusual for you, when you send out a circular, to make a check mark?

A. I don't always use a check mark—it all depends. If making anything out from a card system, I would check the card—it all depends.

Q. Do you make about the same check mark as you are going along, usually?

A. Not necessarily. I am afraid I wouldn't make the same ones all the time.

Q. Check marks are more or less characteristic though, aren't they?

A. Yes.

Q. Do you see any check mark on page 600 like yours (referring to Libelants' Exhibit 28 for identification)?

A. No, sir.

Q. Or on the next page, 601?

A. No, sir.

Q. You don't make check marks like that, do you?

A. No, sir.

Q. Turning back a couple of pages—because the other check marks are the same—go back to 596: You don't find any check marks like yours, do you?

A. No, sir.

Q. Going back further, to 592, other pages apparently the same—no check marks like yours?

A. No, sir.

Q. Now, we are way back to 584—you don't find any there like yours, do you?

A. No, sir.

Q. Would you mind making a check mark for me?

(Witness does as requested.)

Mr. Clark:

I will offer that in evidence.

It is marked Respondents' Exhibit 4.

Q. On page 583—I don't suppose you would own those, would you?

A. No, sir, definitely not.

Q. Are there any on page 583 that you would own?

A. No, sir.

Q. How about page 582, referring to the same exhibit, Libelants' Exhibit 28 for identification?

A. I couldn't swear to that.

Q. You couldn't swear to any on page 582?

A. I mean a check is a check, and sometimes you make one one way and sometimes you make one another. I would say that looks more like mine (referring to the check mark opposite "Seebeck" on page 582).

Q. You would say that is yours?

A. That is a kind of a check I would make.

Q. Any others on page 582?

A. Well, I can't be definite.

Q. You might make any one like that?

A. Yes.

Q. In other words, you take these pages 581 and 580—page 581 is "Ss", and page 580 is "Rs". How about the "Rs" on 580 and the "Ss" on 581—are those check marks generally by the same individual?

A. Well, they are not all alike, that is certain.

Q. They are not all alike?

A. No.

Q. Would you own any of them?

A. I couldn't say definitely. I mean, some of them are like mine and others are not. I would say some of them were, yes.

Q. Well now, here are the "Rs"—here is page 578 and page 579—they are all "Rs"—do you own any of those?

A. Some of them look like mine, yes, sir.

Q. Some look like yours?

A. Yes, sir.

Q. But you couldn't say all?

A. Well, it is pretty hard to say. If you make a check in a hurry, or just don't always make it the same way, why—

Q. Here are "Ps" and "Rs"—how about those two pages—574 and 575?

A. They are mine, I would say.

Q. You think those are all yours?

A. I would say—I don't know—yes, I would.

Q. You say all of those on pages 574 and 575 are yours?

A. I wouldn't say all of them, I can't be sure about every one of them.

Q. But some of them?

A. Yes, sir.

Q. Does that also apply to pages 572 and 573?

A. Yes, sir.

Q. You couldn't say all, but some?

A. I would say they belong to me.

Q. All of them or some of them?

A. It is awful hard to say now. Now that (indicating) you can definitely say was made in a hurry—that one—so I don't know what to say about that—they look like my checks.

Q. Are you willing to testify that all of the checks on pages 572 and 573 are yours?

A. To the best of my knowledge they are.

Q. You think they all are?

A. Well, I can't say every one of them—that I couldn't say. I don't know whose hands the book might have been in since I had it.

Q. But pages 574 and 575—do you feel the same about those two pages as you do about pages 572 and 573?

A. Yes, sir.

Q. You think they are all yours but you don't know, is that right?

A. As I say, I don't know who might have had the book since I had it. They might have made a check—a check mark is a check mark, it is hard to distinguish.

Q. Who else was in the office working on this book while you were there?

A. No one.

Q. That is you alone were the one that was working on this book during the time you were there from September 15th to September 25, 1933?

A. That is right.

Q. Well then, if you started somewhere in the "P"—"Patton", as you say, and you went through the "Rs", there wouldn't be anyone else make a check mark in the book?

A. When I made the remark about where I ended, I can't be definite about that. I know that those marks further on are not my marks. That one that is similar to an "N"—that definitely is not my mark, so I can't say where I ended.

Q. And that begins—that check mark that is similar to an "N"—as I look at the book it begins on page 583 with the name "Sennett", is that right?

A. It appears to be.

Q. Can you be any more definite about the name John S. Phipps in this book than anyone else in the book?

A. No, sir.

Q. You couldn't recognize your check—whether the check on Phipps's name was yours, any more than you could the others, could you?

A. My checks are definite—I mean where I started they are more uniform than they are later, and those checks I identify as mine, there is any number of them there, and for that reason I can't determine where I left off, and as I say it is possible to make a check differently at one time than another.

Q. What we are interested in at the moment is the check that appears in this book on page 572 against the name "John S. Phipps". Now, what I want to know is, whether you can be any more definite about the check



in the book against the name "John S. Phipps" than any of the others in the book?

A. I can be definite about those only where I began, before John S. Phipps, and including those, and some beyond that, but how far I can't determine.

Q. Well, of course, you are the person who is testifying with reference to certain work being done and certain checks in this book.

A. That is true.

Q. And we will have to rely upon your testimony as to what checks are yours. Now, I ask you again if you can be any more certain about the check in pencil against the name "John S. Phipps", which appears on page 572 of this book, Libelants' Exhibit 28 for identification, than you can any others in the book?

A. Well, I don't believe I understand the question. I thought I answered that in the previous question. I mean all of those I can identify as my definite checks are before and beyond that.

Q. Yes, but you have said that you started in this book at a certain place.

A. That is true.

Q. And you said that you went, you thought, through the "Rs"?

A. That is indefinite—I haven't any way of telling where I ended in the book.

Q. I ask you again if you can identify the check against the name "John S. Phipps" better than you can any other of the checks which you made in this book?

A. Not better than any of the others.

Q. Can you go through this book, from the time you first started, and go through all that you made and identify the checks?

A. No, sir.

Q. And there was no one else in the office at the time doing this work?

A. Not during the time I was there, no, sir.

Q. Let me get the mechanics right: As I understand you, you filled out a certain name on this circular letter (Libelants' Exhibit 24)—you filled in a date, and then whatever you filled out—the circulars which you filled out—were sent to Mr. Wright, is that right—or did you take them to him?

A. They were put on Mr. Wright's desk. He, in turn, signed them and I put them in the envelopes, stamped them and mailed them personally.

Q. When you got those back from him, you put them in the envelopes and mailed them, is that right?

A. Yes, sir.

Q. You mailed all you got back from him?

A. Yes, sir.

Q. Did you go over the book after you got them back and check up and see whether you received back from him all that you gave him?

A. No, sir.

Q. You did not?

A. No, sir.

Mr. Clark:

I want to have the record show that at page 572 of Libelants' Exhibit 28 for identification, under the name "John S. Phipps", appears the address "465 East 57th Street, New York City".

#### Re-Direct Examination.

By Mr. Shaw:

Q. Miss LeBar, are you able to identify the check marks on page 567 as yours?

A. No, sir.

Q. At what point are you able to identify your check marks in Libelants' Exhibit 28 for identification?

A. Beginning on page 571.

## Re-Cross Examination.

By Mr. Clark:

Q. You refer now to "Beginning on page 571" to the check marks on page 571?

A. I don't know where I stopped.

Q. Well, you see, Miss LeBar, Mr. Shaw, according to one of the things that lawyers sometimes do—he asked you a question as to where you—if I remember the question correctly—where you can begin to identify your check marks. Now, I don't know whether he is going to argue from that later on—or someone else—that if you begin there that means everything that goes thereafter—and I want the record clear about it, because certainly that is not according to your former testimony, and I don't want to have any misunderstanding about it.

Mr. Shaw:

I object to that statement, it is consistent with her previous testimony.

Mr. Clark:

All right, I just want to know what you are about. We will go right after it now and we will see whether it is or not. We will take these, name for name, and we will have the record straight so there will be no misunderstanding about it at all.

Q. Take the name "Patton" on page 571. Can you identify that check mark as yours?

A. Yes.

Q. Take the next name "Patzowsky"—can you identify that check mark as yours?

A. Yes, sir.

Q. We will skip "Paugh"—there doesn't seem to be any check mark against it, does there?

A. Wouldn't this apply (indicating)?

Q. You are referring to this check mark in the following column?

A. Yes—isn't that a check mark?

Q. Is that check mark in the second column made for the first column?

A. I would say so.

Q. Is that your check?

A. I would say so.

Q. And you also say that the check is for "Paugh", is that right?

A. I can't be definite on that.

Q. You mean you cannot be definite as to whether the check mark is for "Paugh"?

A. That is true.

Q. Take the next one "A. E. Paul"—is that your check mark?

A. I would say so.

Q. Take the next one "A. J. Drexel Paul"—is that check mark yours?

A. I would say so.

Q. Take the next "Dwight C. Paul", is that yours?

A. The same applies—I mean I would say these check marks are all mine.

Q. Take the next one "Paxson"—is that yours?

A. Yes, sir.

Q. Take the next one "Payn"—is that one yours?

A. Yes, sir.

Q. Take the next one "Payson"—is that yours?

A. Yes.

Q. And the next?

A. Yes.

Q. The next is under "Payson"—"Herbert Payson" and "Samuel C. Payson"—are those yours?

A. Yes.

Q. And "W. Rodman Peabody"—that is yours?

A. Yes.

Q. "Sifford Peare"?

A. Yes.

Q. "Pearsall"—"A. A. Pearsall"—is that yours?

A. Yes.

Q. "Horace B. Pearson"—is that yours?

A. Yes, sir.

Q. "Philip C. Pearson"—is that yours?

A. Yes, sir.

Q. "Benjamin T. Peck"?

A. Yes.

Q. "W. W. Pedder Estate"—is that yours?

A. Yes, sir.

Q. "K. Pederson"—is that yours?

A. Yes, sir.

Q. I see the name at the bottom of page 571, "Dr. Armando Alvarez Pedroso" has no check on that—how do you account for that?

A. It is in Havana, Cuba, Mr. Wright (addressing Mr. Wright).

Q. How do you account for that?

A. My memory wouldn't serve me that well.

Q. "Helen V. Pees"—is that yours?

A. I would say so.

Q. "Albert E. Peirce"—is that yours?

A. Yes, sir.

Q. And "William H. Peirce"?

A. Yes.

Q. And "Dr. Ivy Pelzman"—is that yours?

A. Yes, sir.

Q. There is no check on the next one, unless it is the check in the next column "W. P. Pembroke"?

A. Yes, sir, that is mine, I would say, it looks like a check to me.

Q. Is it your check—do you identify it as your check?

A. Yes, sir.

Q. "E. S. Pendleton"—is that yours?



- A. Is that the one you were talking about?
- Q. No "Pembroke" I asked you about, where there was some kind of a mark—and I asked you if it was your check, and I think you identified it as your check.
- A. Yes, that is right.
- Q. "E. S. Pendleton"—is that your check?
- A. Yes.
- Q. "William S. Penick"?
- A. Yes.
- Q. Now, that check is in the next column—but is that check in the next column meant for that?
- A. Yes, I would say so.
- Q. That is your check, is it?
- A. I would say so.
- Q. "Peninsular Investment & Holding Company"?
- A. Yes.
- Q. And "E. S. Penn"—is that your check?
- A. Yes, sir.
- Q. "Charles P. Penney"—is that your check?
- A. Yes.
- Q. "William O. Penney"—that also has a check in the column to the right?
- A. Yes.
- Q. But that check goes to "William O. Penney", does it?
- A. Yes.
- Q. And you identify that as your check, do you?
- A. Yes, sir.
- Q. "Charles E. Penney"?
- A. Yes.
- Q. You identify that as your check?
- A. Yes.
- Q. "David C. Percival"—do you identify that as your check?
- A. That check is here (indicating)—I don't know whether it applies to that—apparently it does.

- Q. Well, is it your check?  
A. Apparently.  
Q. Do you identify it as your check?  
A. Yes.  
Q. "Alphonse Pericot"—that also has the check in the other column—does that go with "Alphonse Pericot"?  
A. Yes, sir.  
Q. Do you identify it as your check?  
A. Yes.  
Q. Now "Mrs. B. C. Perkins"?  
A. Yes.  
Q. You identify that as your check?  
A. Yes, sir.  
Q. "Charles Perkins"?  
A. Yes, sir.  
Q. You identify that as your check?  
A. Yes.  
Q. "Douglas Perkins"?  
A. Yes.  
Q. You identify that as your check?  
A. Yes, sir.  
Q. "James H. Perkins"—do you identify that as your check?  
A. Yes, sir.  
Q. "S. A. Perkins"—do you identify that as your check?  
A. That is doubtful.  
Q. You think that is doubtful whether it is yours?  
A. It is more like a cross—I don't know whether it is a check or not—that is doubtful.  
Q. That is the first doubtful one we have had on this page, isn't it—"F. E. Pernot"—there is no check on it at all. "Edward S. Perot"—do you identify that as your check?  
A. Yes, sir.  
Q. "Arthur Perry Est."—I suppose that means Estate?  
A. Yes.

Q. Do you identify that as your check?

A. Yes, sir.

Q. "Bertrand H. Perry"—do you identify that as your check?

A. Yes, sir.

Q. "E. D. Perry"—do you identify that as your check?

A. Yes, sir.

Q. "Howard E. Perry"—do you identify that as your check?

A. Yes, sir.

Q. "Marsden J. Perry"—do you identify that as your check?

A. Yes, sir.

Q. "Norman A. Perry"—do you identify that as your check?

A. Yes, sir.

Q. "Dr. G. A. Persson"—do you identify that as your check?

A. Apparently.

Q. Well, what does "apparently" mean—the other answers have been "Yes, sir".

A. Well, make it yes, sir, then.

Q. "Andrew J. Peters"—is that your check?

A. Yes.

Q. "C. O. Peters"?

A. Yes, sir.

Q. That is yours—the check is yours?

A. I had better make that one doubtful—I mean I can't—

Q. Just what is there doubtful about that check, will you tell me, please?

A. Well, I am not certain about it, I mean as far as that goes, as I said before, some of the checks at the beginning here I know I sent these out, but there might be some reason that I didn't make that check.

Q. Let's take that page 571. If I remember your answers, on the first page 571, I think you have two doubt-

fuls, and one you said "apparently", and I asked you why you said "apparently" when you answered others "Yes, sir", and you said "Make that one yes, sir"—is that right?

A. Yes.

Q. That covers the page, is that right?

A. Yes.

Q. That covers the resume of that page, is that right?

A. Yes, sir.

Q. Let's take this page over here—page 576—we will skip from page 571 to 576. This is in the "Rs": Are these checks all yours, or are some of those doubtful—just look over them generally and perhaps we won't have to go over the whole page individual by individual.

A. A lot of these are doubtful.

Q. A lot of them are doubtful?

A. Yes, sir.

Q. As many as half or a third?

A. A lot of them.

Q. A lot of them on page 576 are doubtful, is that right?

A. Yes, sir.

Q. How about page 575?

A. Well, I can't pick every one of them out, as I say my checks are not always the same, and where I ended I don't know. I know that I—

Q. Are a lot of those doubtful on page 575?

A. The majority of them look like mine.

Q. Which ones are doubtful?

A. For instance, something like this (indicating).

Q. That is on page 574, Miss LaBar.

A. You want 575?

Q. Yes, for the moment.

A. They more or less all look like mine.

Q. What do you mean more or less?

A. As a matter of fact, I remember John S. Raskob.

Q. That name more or less caught your eye, did it?

A. Yes, sir.

Q. Do you mean you remember sending one to John S. Raskob?

A. Yes, I remember that.

Q. Has he got a check—is he checked?

A. Yes (indicating).

Q. Where is the check for "Jonathan S. Raymond"?

A. Some of these are on the right and some on the left—there is two on that one (indicating).

Q. It looks as if that bottom row there, on page 575, were short a check. You checked on "James H. Rand, Sr."—that is the bottom of the first column on page 575—then there is a check on "Raymond" right next to "Raskob", then a check on "Reckford", then there is another check there on the same column that might do for "Reese", but isn't it true that you have got five names there on the bottom, and only four checks—isn't that right?

A. There are two here too—I would say this check (indicating) applied to John S. Raskob because they are checked on this side.

Q. You point out there are two here, but there are two names too?

A. Oh, I see.

Q. It looks to me as if you got so excited on seeing Johnnie Raskob's name there, you didn't check them?

A. Well, I was sort of affiliated with him.

Q. It is short a check, isn't it—don't you think so—isn't that right?

A. One of them is.

Q. You wouldn't think of covering "John" by sending one to "Mrs.", would you? Now, let's see how about page 574?

A. They look like my checks.

Q. Do you notice that some of these checks here haven't got that sharp end on them, have they, like yours (indicating Respondents' Exhibit 4)?



A. That is why, I said it is hard to determine where I ended, but the majority of these look like my checks, but you don't always make the same check.

Q. You wouldn't say definitely they are yours?

A. I would say those are practically all mine (indicating pages 574 and 575).

Q. When you say "practically", what do you mean?

A. Well, as I say, I couldn't swear that every one of them was my check.

Q. Isn't it true, right from the very beginning through whatever you did, you can't swear they are all yours, can you?

A. Practically. Naturally I started at a certain place in this book and I know I sent them out. Where I ended, I don't know, but I know I sent any amount of them out, and my checks are, as you can see, definite in many places, and then again you make a check in a hurry, it is not a replica of the previous one.

1462 E. D. WRIGHT recalled.

### Re-Direct Examination.

By Mr. Shaw:

Q. Mr. Wright, you have been present during Miss LaBar's testimony, have you not?

A. Yes, I have.

Q. And you have heard her testify that she would take these circulars and would type in the names and addresses of the persons to whom the circulars were to be sent, and then she would put these circulars upon your desk for your signature, after which she would take them up from your desk and mail them?

A. That is right.

Q. Now, do you recall whether or not you would take any of these circulars out of this pile that she put

upon your desk for your signature, for the reason that you did not want them mailed?

A. Why of course not. We circularized every owner here (indicating 'Libelants' Exhibit 28 for identification), and that is our regular way of doing things. Why should I take them out?

Q. And did you sign the circulars that were put upon your desk for your signature?

A. Yes, sir.

Q. Did you instruct Miss LeBar or anyone else in your office not to actually mail some of the circulars that were put upon your desk, or any of them?

A. No, I did not.

Q. So far as you know, all of the circulars that were put upon your desk and you signed were actually mailed?

A. Yes, sir.

#### Re-Cross Examination.

By Mr. Clark:

Q. You didn't do the mailing, did you, Mr. Wright?

A. No. If I saw a bunch on the desk I may have put them in the box, but it would be very seldom, to answer the question fully.

Q. How many were there in your office at this time, September 1933?

A. Just the two of us—myself and secretary.

Q. And you never had more than one secretary at a time?

A. They overlapped for a day or two, one instructing another, something like that—not more than that.

Q. Did the secretary that you had before Miss LaBar come in—the secretary that went away for a vacation—how long had she been with you before September 15, 1933?

A. I couldn't answer offhand—she was probably with me for some years.

Q. Do you remember her name?

A. Bertha Pavlinek.

Q. Is that in your former testimony?

A. I think it is.

Mr. Shaw:

I will give you her name and address and telephone number.

Q. Then am I correct—and I gather this from Miss LaBar's testimony—that there was only one person working on that book (Libelants' Exhibit 28 for identification) at a time?

A. Correct.

Q. And how many worked on it—can you tell me that—1933 is what I am interested in.

A. That year it would be just Miss Pavlinek and Miss LaBar.

Q. Were the only two?

A. Yes, only two, because I had no extra secretary.

Q. Do you have any favorites when you are sending this stuff out, Mr. Wright?

A. How do you mean favorites?

Q. Well this: That starts—it says "Begin here" on page 567—and it starts with a check on "Nagle". Here is a check on "Myer", but I don't see any checks previous to that—that is what I am curious about.

A. I don't know exactly. I will tell you how the thing is—do you want it off the record or on—I can explain the thing: Each year we take the new book, check off the ones that we checked the year before, and put in all the new ones and circularize all the new yacht owners, that is that went in the year previous—just how this thing was done I don't know. I left that all to my secretary, I have all I can do without it.

Q. You see here the book "List of yacht owners" addresses, starts here in this book (Libelants' Exhibit 28

for identification), page 503 "As", and the first check is on the name "Charles K. Myer" on page 567.

A. No, I couldn't explain that.

Q. Then you have checks here—various kinds of checks—from 567 through the book—603 through the word "Zubrigg". You see what I mean? I am curious to know why all these others aren't circularized. Has it any significance at all?

A. I don't think so, because we circularized them from way back, and we wouldn't circularize half the book and not the other.

Q. The book doesn't show it, does it?

A. No.

#### Re-Direct Examination.

By Mr. Shaw:

Q. Could there have been another book that the rest were circularized from, do you know?

A. I couldn't tell you offhand.

United States District Court, Southern District of Florida,  
Miami Division.

Charles Coryell, et al., Libelants,  
against

George J. Pilkington and John S. Phipps, Respondents.

Further deposition taken on behalf of the libelants, at the office of Messrs. Bigham, Englar, Jones & Houston, 99 John Street, New York City, November 6, 1939.

#### Appearances:

Messrs. Batchelor & Dyer, Messrs. Bigham, Englar, Jones & Houston (Mr. Matteson) for the libelants.

Messrs. Loftin, Stokes & Calkins, Ray C. Alley, Esq., Messrs. Burlingham, Veeder, Clark & Hupper (Mr. Underwood) for John S. Phipps.

It is stipulated that the testimony may be taken by a stenographer, signing, filing and certification being waived, stenographer's fees to be taxable.

1469      ANDREW J. SMITH, being duly sworn and examined for the libelants, testified as follows:

By Mr. Matteson:

Q. What is your occupation?

A. Marine surveyor.

Q. How long have you been engaged in that work?

A. Twenty-two years.

Q. Tell us generally what your experience has been.

A. Primarily, the handling of losses in the field, as far as letting contracts for repair and the inspection and valuation of various types of vessels for insurance purposes.

Q. What organization are you connected with?

A. Marine office of America.

Q. How much of your work has had to do with yachts of various types and classes?

A. In percentage, you mean?

Q. Just give us a general idea. Have you had a good deal to do with yachts, or not?

A. Considerable. It is probably less than half my total work, but I have had a good deal of yacht work from the time I joined the Company.

Q. Your surveying has to do with all classes of vessels?

A. Yes.

Q. Have you any connection with the National Fire Protection Association?

A. I am Secretary of the Marine Section, which was formerly the Marine Committee of the National Fire Protection Association.

Q. How long have you been connected with the National Fire Protection Association?

A. Since 1921 that I first acted as Secretary.

Q. Will you describe for us the organization and functions of the National Fire Protection Association.



Mr. Underwood:

I object to that on the ground that the testimony is incompetent and immaterial in this litigation.

A. It is a non-profit organization, composed of two classes of membership, the full membership being various business and scientific associations, and the associate membership composed of corporations and individuals. The object is the promulgation of standards for fire protection, general education of the public in the principles of fire protection.

Q. What is this pamphlet that I show you (handing witness pamphlet)?

A. Well, it is just what it says on the cover, Story of the National Fire Protection Association's aims, activities and current publications.

Q. Does that contain a description of the organization and its methods of operation?

Mr. Underwood:

Objected to as incompetent and immaterial.

A. Yes.

Mr. Matteson:

I offer it in evidence.

Mr. Underwood:

Objected to on the ground that it has not been properly identified, not properly proved, incompetent, irrelevant and immaterial.

It is marked Libelants' Exhibit 133.

Mr. Underwood:

Was this published in 1939, Mr. Smith?

The Witness:

I think it is the same one they have had for several years—just a descriptive pamphlet.

Mr. Underwood:

I call your attention to the date in the lower lefthand corner of the first page "D47-5M-6-39". Does that mean it was published in June 1939?

The Witness:

I don't know what it is, it is just their printer's mark—they have their own press.

Mr. Underwood:

Do you know when it was published?

The Witness:

Originally?

Mr. Underwood:

No, that paper (Libelants' Exhibit 133).

The Witness:

I don't know when the particular pamphlet was published.

Q. Mr. Smith, as long as some point has been made of the date of publication of this document (Libelants' Exhibit 133) I have shown you, I show you this one (handing witness another pamphlet), and ask you if you can tell me the date of publication of this one.

A. You can tell by this printer's mark on the corner.

Q. And that says what?

Mr. Underwood:

I object to what that says.

A. "D-2-M-3-51". I presume it means the date of the edition—that particular printing.

Q. This second one that I have shown you, does that contain a list of the members of the National Fire Protection Association?

Mr. Underwood:

I object to that, no foundation laid.

A. That is what it says—the members.

Q. Do you have an official connection with this Association?

A. Yes, as Secretary of the Marine Section.

Q. Well, can you or can you not identify this pamphlet I am showing you now as a publication of that Association, showing its list of members as of 1931?

A. Yes, there is the 1931—it is evidently the edition date—printer's mark—and I can identify it as such.

Mr. Matteson:

I would like to withdraw the other exhibit (Labelants' Exhibit 133) and substitute this one.

Mr. Underwood:

When did you first see this paper which I have in my hand—the second one that Mr. Matteson showed you?

The Witness:

Just now.

Mr. Underwood:

You don't know any more about where it was printed or when than appears on the paper itself, do you?

The Witness:

That particular sheet, no, only what it says on it.

Mr. Underwood:

You are not an officer of the National Fire Protection Association, are you?

The Witness:

No.

Mr. Underwood:

You are not a member of it?

The Witness:

Only a representative of it.

Mr. Underwood:

That is to say, you are not a member?

The Witness:

No.

Mr. Underwood:

Do you know who the members were in 1931?

The Witness:

Not the complete list.

Mr. Underwood:

You can't say of your own knowledge whether this list on the second page is a complete list or an accurate list, can you?

The Witness:

Not of my own knowledge.

Mr. Underwood:

I object to it on the ground that it has not been properly proved, incompetent, irrelevant and immaterial.

Mr. Matteson:

It seems to me that the objections of counsel are very captious. The document is very evidently authentic, it is perfectly possible to prove it by an officer of the Association if required. The witness is Secretary of one of the important committees of the Association. I ask to have it substituted for the previous Exhibit 133.

Mr. Underwood:

I have no objection to substituting the second one for the first one, but I stand on my objection as to its admissibility in evidence.

The second pamphlet is marked Libelants' Exhibit 133.

Q. Can you tell us, Mr. Smith, from your connection with this Association, whether the statements contained in the reading part of this pamphlet, as to the activities and service organization of the Association are correct?

Mr. Underwood:

Objected to as incompetent, irrelevant and immaterial, not the proper way to prove it. The qualifications of the witness to speak for the Association have not been established.

A. I can say that I am familiar with a great many of these publications that are mentioned in there; and I am satisfied that that is a list of the publications as of the date of this pamphlet (Libelants' Exhibit 133).

Q. How about the list of members?

Mr. Underwood:

Same objection.



A. I can answer in the same way: I am satisfied that is a list of the members as of the date of that publication.

Q. How about the statements contained in the pamphlet with respect to the activities of the Association?

Mr. Underwood:

Same objection.

A. I don't recall whether I have read that particular edition or not, but I am satisfied that that is a correct statement of the activities, as of the date of that pamphlet.

Q. Well, will you glance over this reading material, in view of the fact that questions have been raised?

A. I am satisfied that that is a correct statement of their activities.

Q. Can you tell us of your own knowledge whether or not it is a fact that the National Association of Engine and Boat Manufacturers is a member of the Association?

A. They are now.

Q. Do you know how long they have been?

A. No, sir.

Q. Can you tell us whether they were in 1931?

A. I don't know from my own knowledge exactly what year they came in—whether 1931—but they are on the list of members of 1931, and that satisfies me.

Mr. Underwood:

I object to the latter part of that answer and move to strike it out.

Q. How about the American Institute of Architects?

A. I don't know.

Mr. Underwood:

I object to showing the witness the document and asking him to read what the document says.

A. I am satisfied that they were members at the time this pamphlet was published.

Q. In 1931?

A. That is what it says on there.

Q. The American Petroleum Institute?

A. They are members.

Q. The Bureau of Explosives?

A. They are members.

Q. The Diesel Engine Manufacturers Association?

A. They are members.

Q. International Association of Electrical Inspectors?

A. I don't know about that.

Q. Well, can you (handing witness Exhibit 133)—

A. I can verify it by this (referring to Exhibit 133).

I don't see the International Association of Electrical Inspectors' name there.

Q. The International Association of Fire Fighters?

A. I don't know. (Referring to Exhibit 133.) I am satisfied that they are members.

Q. Underwriters' Laboratories, Inc.?

A. They are members.

Q. You know that of your own knowledge?

A. Yes.

Q. I show you Libelants' Exhibit 97 in this case, a publication entitled "Regulations governing Marine Fire Hazards", and ask you if you can tell me anything about the origin and publication of that pamphlet?

Mr. Underwood:

That question calls for a yes or no answer, does it not?

A. Yes.

Q. Will you tell us what you know of the origin and the circumstances of the publication of this pamphlet (Libelants' Exhibit 97)?

Mr. Underwood:

I object to that as incompetent, irrelevant and immaterial, not binding on the respondent Phipps.

A. About 1917 or 1918, a Marine Committee was formed in the National Fire Protection Association, that did not become active until about 1920, and in 1922 the first edition of the Regulations governing Marine Fire Hazards was submitted, approved and published. There was a second edition 1926, and 1930, which I have here (Libelants' Exhibit 97), is the third edition. That was approved by a committee representing the various marine interests, and the special subjects were handled by sub-committees, in which at least one or two members of the Marine Committee sat, and their work was compiled into these pamphlets.

Q. In this pamphlet, Libelants' Exhibit 97, there is one section headed "Appendix D. Internal Combustion Engines". Will you tell us what you know particularly about the origin of that set of regulations?

A. That was one of the sub-committees that were formed just prior to the second edition in 1926. Their work was submitted to the Marine Committee, which in turn submitted it, with some revision, to the National Fire Protection Association, and it was adopted as of 1926.

Q. You are referring now to the set of rules entitled "1926"?

A. 1926. That was further enlarged and amended in the 1930 edition by substantially the same sub-committee, it went through the same procedure.

Q. Is this book which I have in my hand a set of the 1926 regulations that you refer to?

A. Yes.

Mr. Matteson:

I offer it in evidence.

Mr. Underwood:

Objected to as incompetent, irrelevant and immaterial, not binding on the respondent Phipps.

It is marked Libelants' Exhibit 134.

Q. What is the most recent edition of these rules?

A. 1939.

Q. Is this pamphlet which I show you now, a copy of the most recent set?

A. Yes.

Mr. Matteson:

I offer it in evidence.

Mr. Underwood:

Objected to on the same grounds, and on the additional grounds it was not in force or effect at the time of this fire, and that it is not complete.

It is marked Libelants' Exhibit 135.

Q. You spoke of a set of 1922 rules. Did they have any separate rules with respect to motor craft?

A. No.

Q. Was this 1926 set the first set that had a subdivision relating to motor craft?

A. Yes, the Internal Combustion Engine rules.

Q. Did I understand you to say that somewhere along the line there was a change in the organization of the Marine Section?



A. Yes.

Q. When was that?

A. 1934, the Marine Committee became the Marine Section.

Q. So at the time these rules were drawn up, it was known as the Marine Committee, rather than the Marine Section, is it?

A. That is right.

Q. What was your connection with the Marine Committee?

A. Secretary.

Q. And did you occupy that position at the time all of these sets that have been referred to were published?

A. Yes.

Q. Under the Marine Committee, the sub-committee that prepared these rules, was known as what?

A. The Internal Combustion Engine Committee.

Q. Can you tell us what the membership of this committee is?

Mr. Underwood:

Let me make a general objection to this entire line of testimony—is that satisfactory?

Mr. Matteson:

Yes.

Mr. Underwood:

I object to the entire line of testimony sought to be elicited from this witness about the rules of the National Fire Protection Association, on the ground that the rules themselves have no binding force and effect on the respondent Phipps, and that their origin and history, the persons who considered them, and how they came to be published, is incompetent, irrelevant and immaterial, and I ask that that objection be taken to all the testimony of this witness along that line.



A. 1930, Mr. H. E. Newell, Chairman.

Q. And who was he?

A. He was one of the engineers of the National Board of Fire Underwriters. Mr. J. I. Banash.

Q. Who was he?

A. Consulting engineer, specializing in gases. Harte Cook, chief engineer of the McIntosh & Seymour Corporation.

Q. Who was the McIntosh & Seymour Corporation?

A. Diesel engine builders. George F. Crouch—

Mr. Underwood:

This is the sub-committee you are giving us?

The Witness:

This is the sub-committee, Internal Combustion Engines.

A. (Continuing.) He is the naval architect for Henry B. Nevin at City Island, also consulting yacht engineer and architect.

Q. And who are Henry B. Nevin?

A. Yacht builders. L. B. Jackson, chief engineer of Fairbanks Morse.

Q. And who are Fairbanks Morse?

A. Builders of gasoline and oil engines. They handle both service ignition and Diesels. J. L. Crone, he is the United States Supervising Inspector of the local New York district, I think it is No. 3, isn't it?

Q. Supervising Inspector of steam vessels?

A. Yes.

Q. That is his official title with the Government?

A. Yes. George A. Smith of the American Bureau of Shipping.

Q. Do you know what his connection with the American Bureau of Shipping was?

A. He is the man that had charge of any yacht work in the American Bureau. He is one of the engineers, he is not an outside surveyor—one of the engineers of the American Bureau of Shipping.

Q. What is the American Bureau of Shipping?

A. A classification society. A. E. Luders, he is the President of Luders Marine Construction Company, and on this committee represented the National Association of Engine and Boat Manufacturers.

Q. What is the National Association of Engine and Boat Manufacturers?

A. A trade association of boat and marine engine builders.

Q. What type of boats?

A. Mostly yachts—most of their work is primarily yachts.

Q. At the present time, who is chairman of the committee that has taken the place of the original committee?

A. Mr. Luders.

Q. He was a member at that time, and he is chairman now?

A. He is chairman now.

Q. What other members are there of the committee at the present time that were not on the committee at that time?

A. I think I can name them without looking, but I could certainly name several by checking back. Mr. F. T. Wright, who was an electrical engineer of the Underwriters' Laboratories, Mr. James Nelson, chief electrician of the Marine Basin Company.

Q. What is the Marine Basin Company?

A. A boat repair and service company.

Q. What kind of boats do they handle?

A. Commercial and yachts. Mr. E. D. Wright.

Q. Who is Mr. E. D. Wright?

A. Mr. Wright is the bureau for fire and explosion prevention on motorboats. He is engaged by a group of underwriters and the National Association of Engine and Boat Manufacturers. Mr. W. E. John—Mr. John is now with W. E. John Associates. They are a repair and service company for yachts at Hunts Point, Rye, New York. At the time of the selection to membership, he was representing the American Fireboat Association.

Q. Is Mr. Loeser—

A. Yes, Mr. John C. Loeser. He is a member of the firm of Gebauhr & Loeser of 66 Beaver Street—I think the address is. They are a firm of underwriters and marine surveyors, Mr. Loeser specializing on yachts.

Q. Now, going back to these 1930 rules, will you tell us what the gentlemen whom you name as being members of the committee at that time, had to do with the preparation of these rules contained in Appendix D, Libelants' Exhibit 97?

A. May I ask the question, to clarify my answer: Do you want the method of how these rules were drawn up?

Q. That is it exactly.

A. Mr. George A. Smith—there is another one I forgot—Captain A. B. Drisko—he is the surveyor for Chubb & Son, marine underwriters. Mr. George A. Smith, Captain A. B. Drisko and myself prepared a draft based on the 1926 edition, submitted that to the Motor Craft, or the Internal Combustion Engine Committee. They held several meetings, discussed all the details, agreed on changes or confirmed the draft, and in turn submitted that to the Marine Committee. Again it was discussed in the committee, and to my recollection very few changes were made, if any. That was submitted to the National Fire Protection Association and adopted to succeed the 1926 edition. I might add this: The procedure, in adopting by the National Fire Protection As-

sociation, requires the tentative submittal at one convention and the lapse of a year for the receipt of criticism or comment before it may be again put forward for final adoption. All these have gone through that procedure.

Q. And was the procedure similar with respect to the 1926 rules?

A. Yes.

Q. And also with respect to the 1939 rules?

A. No, because the 1939 rules, there were just a few amendments—it was with respect to the 1937. 1939 is almost a reprint of 1937, because the supply was exhausted and there were a few changes made but they were all submitted for final adoption specifically on the floor, and they did not require the year to lapse.

Q. Otherwise the procedure was the same?

A. As in the case of the 1926, 1930 and 1937.

Q. And the consideration by the Committee—was that the same?

A. Yes.

Q. Going back to the 1930 rules, and speaking as of that date, they were published—

A. To be absolutely accurate on this: Since the Marine Committee became a Marine Section, the submittals are to the Marine Section as a body, and they are authorized by the NFPA, to approve their technical reports, but that is the same thing as the approval of the NFPA.

Q. When was this approval of the adoption by the Marine Section?

A. 1934.

Q. That was subsequent to the 1930?

A. Yes. 1937 never went before the convention, it was authorized by the convention—the Marine Section was authorized as a section to adopt its own promulgation.

Q. With respect to the 1930 rules, and speaking as of the date of the publication of these rules, what do these rules represent?



A. A standard of practice for the installation and operation of machinery and equipment for motor craft.

Q. In your opinion, Mr. Smith, based on your own experience with vessels of this type, do or do not the rules contained in Appendix D represent a standard of safe and proper practice on motor craft, as of that date?

Mr. Underwood:

Objected to as incompetent, not qualified.

A. I consider them so.

Q. In this publication of 1930, attention has been called to a provision that appears at the outset of the pamphlet on page 3, which reads, "No provision in these regulations is to be retroactive as regards construction." Will you tell me what the significance of that provision is?

Mr. Underwood:

Object to calling upon this witness to interpret the document. The question is incompetent, irrelevant and immaterial.

A. That clause was inserted on account of some objections that were raised on the part of builders principally, with the fear that it might involve serious difficulty in altering existing boats, if and when these rules were ever made mandatory by some enforcing organization, municipal or any other kind.

Mr. Underwood:

I move to strike out the answer on the ground that it is not responsive and purports to give the operations of the minds of other people.



Q. Does this provision mean that the rules under Appendix D are totally inapplicable to vessels constructed prior to 1930?

Mr. Underwood:

Objected to as incompetent, irrelevant and immaterial, calling for the construction of the written document, and I also object to the form of the question.

A. No, it does not.

Q. Well, in what respects are the applicability of the rules under Appendix D controlled by the provision to which I have called your attention?

Mr. Underwood:

Will it be satisfactory if I make a general objection to all these questions about the meaning of this clause, so that I won't have to interrupt the train of thought of both of you? Will that be all right?

Mr. Matteson:

Certainly.

Mr. Underwood:

I make the general objection then to the whole line of this testimony about the meaning of the retroactive clause.

A. Where they would involve unwarranted expense or impractical alterations to make an existing vessel comply. Where a piece of equipment or a fitting that can be changed without involving such difficulties, the rules would apply.

Q. What is the significance, in your opinion, of the words "as regards construction"—in what sense is "construction" used?

A. Any part of the vessel that is so built in that it would be impractical or unnecessarily expensive to take it out or change it, it would come under the change of construction which is exempted from retroactive application.

Q. Referring specifically to some of these regulations that appear here—I refer particularly to 1 (g), which reads: "Outlets on gas feed line for drawing loose gasoline for any purpose whatever are prohibited in the engine compartment." Is the applicability of that rule, in your opinion, affected by the preliminary provision?

Mr. Underwood:

I object to that on the same general grounds heretofore stated.

A. No.

Q. I refer specifically to provision 1 (i), which reads: "Shut-off valves or cocks of approved type, such as those having ground seats or plugs, shall be placed in the supply line from tank. One valve shall be placed as close to the tank as practicable, another as close to the carburetor as practicable." Would the applicability of that provision, in your opinion, be affected by the preliminary clause to which we referred?

A. No.

Q. Why do you say that, referring both to 1 (g) and 1 (i)?

A. Because neither is a difficult thing to alter to comply.

Q. I refer specifically to 1 (k), which reads: "Gauge glasses and try cocks shall not be used. Other methods of indicating the level of the liquid may be used, provided, however, that they are so arranged as not to expose the liquid or vapor." Would that, in your opinion, be affected by the preliminary clause?

A. No.

Q. I refer to Section 1 (m), which reads: "Auxiliary gasoline tanks shall be of a type permitting the same fill pipe and vent arrangement as required on main tanks in order to avoid handling of loose gasoline under deck. On existing installations, where tanks are mounted, or on integral with auxiliary power units, and it is impracticable to alter in compliance with the above, gasoline supply for such tanks shall be kept only in approved safety cans filled at a station, and particular care against spilling shall be exercised in the operation of filling the auxiliary tanks therefrom." Would that be affected, in your opinion, by the preliminary clause?

A. With the proviso, no.

Q. Now, referring to 2 (a): "All fuel piping shall be seamless drawn annealed copper tubing or I. P. S. copper pipe." Would that, in your opinion, be affected by the preliminary clause?

A. No.

Q. Why not?

A. It is not very difficult to change a feed line.

Q. Would the balance of the provisions with respect to fuel piping, (b), (c), (d) and (e), as recorded here, be affected by the preliminary clause, in your opinion?

A. No.

Q. Under 3 (a): "All carburetors shall have integral therewith or properly secured thereto an approved drip collector. This shall be drained by a device for effectively returning drip to engine intake or discharging it overboard." Would that be affected, in your opinion, by the preliminary clause?

A. No.

Q. I call your attention to Section 6 on ventilation, the first paragraph of which reads: "Any compartment or space in which a motor is located, particularly the lower portion and bilges, shall be provided with ventila-

tion effective to remove all accumulation of flammable or explosive vapor. Tank compartments should be similarly ventilated when practicable." Would that, in your opinion, be affected by the preliminary clause?

A. No.

Q. Why not?

A. Because almost any boat can be fitted with proper ventilation system without undue structural changes.

Q. There are certain provisions here under the heading of "Operation", the first paragraph of which reads: "Attention is called to the hazard involved in the handling of gasoline. An atmospheric concentration as low as 1-1/4 percent is practically odorless, but is sufficient to create a mixture which may be exploded by a slight spark. Such explosive vapor may travel a considerable distance from the point of leakage." Can you tell us, from your experience, whether or not those statements are correct?

Mr. Underwood:

Objected to as incompetent, irrelevant and immaterial, not qualified.

A. Not from my personal experience, because I am not a chemist and never tested it. I can tell you on very good authority that they are.

Mr. Underwood:

I move to strike out the latter sentence in the answer.

Q. When you refer to good authority, what do you have in mind?

Mr. Underwood:

I object to that as incompetent, irrelevant and immaterial, calling for hearsay.



A. The United States Bureau of Standards and the Underwriters' Laboratories.

Q. Some question is raised here of your qualifications, Mr. Smith. Will you tell us at this point how much experience you have had in connections with gasoline boats and explosions or fires occurring thereon?

A. I have been surveyor for the Marine Office of America since 1917. In that time, I have attended surveys on numerous fire and explosion cases, and have had a chance to observe firsthand the results and investigate the causes.

Q. Can you give us any idea how frequently your experience has been in that connection?

A. It is safe to say that there have been several every season.

Q. As surveyor, has it or has it not been part of your duty to investigate the causes of such explosions?

A. It has.

Q. In connection with work of this committee of the National Fire Protection Association with which you have been connected, has there been any investigation or consideration of the properties of gasoline and the causes of explosion?

Mr. Underwood:

Same objections.

A. Not of the properties of gasoline, because those have been taken from the authorities I have already mentioned. The investigation in connection with this committee work has been a recital of numerous instances from various members of the committee of their own experiences as well as my own individually, and the information obtained has been used in compiling these rules for prevention.

Q. I call your attention to the following statement, also under "Operation", immediately following that which



I read: "Gasoline vapors are heavier than air and do not readily escape from low-lying pockets such as bilges or tank bottoms." As a result of your experience and study of the subject, can you say whether or not that is a correct statement?

Mr. Underwood:

Objected to as incompetent, irrelevant and immaterial, and the witness not qualified.

A. From my observation of results, I am convinced that it is true.

Q. Now, in this book of rules—referring to Exhibit 97, 1930 edition—there is a section having to do with "Electrical Installations". Can you tell us the source of those rules?

A. There are a few paragraphs of a general character in that edition nothing some precautions against improper installations of sub-standard voltages, that is below 110, and refers to the then current rules of the American Institute of Electrical Engineers, entitled "Recommended Practice for Electrical Installation on Shipboard".

Q. You refer to this paragraph at the head of page 26?

A. These are all excerpts from the A I E E, 1927.

Q. What are excerpts—the rules themselves, you mean?

A. Yes, all these paragraphs are direct quotations.

Q. Paragraphs from 1 through 19?

A. Through and including 19.

Q. I notice after each one of the numbers, there is another number in parenthesis. Will you tell me what that is?

A. Those refer to the A I E E numbers.

Q. I notice that under Appendix D, paragraph 11 (a); there is a provision that "Electrical Installations operat-

ing at potential of over 32 volts shall be in accordance with Appendix B (A I E E Marine Rules)." Is the reference there to these rules under "Electrical Installations" to which we have just referred?

A. Yes.

Q. Now, with respect to these rules on "Electrical Installations", would they in your opinion be affected by the preliminary construction paragraph?

Mr. Underwood:

Same objection as previously noted.

A. That would depend somewhat on each individual case, they might not and they might.

Q. The factors to take into account would be what?

A. What would be involved in making the change.

Q. That is, when you say what would be involved—

A. The extent and cost of work involved in making the change to comply.

Q. By that, do you or do you not mean whether structural changes would be required?

A. They might be.

Q. How would that affect the situation?

Mr. Underwood:

I take it my objection runs to this whole line.

A. That clause might be cited as not requiring strict compliance with the A I E E.

Q. In what cases?

A. In changing the type and method of installation of the wiring, very often it would involve removal of a great deal of boat structure to make the changes. On the other hand it is possible the change would be made without materially affecting the construction.

Q. The yacht Seminole, which is involved in this litigation, was a vessel which was built in 1904 as a steam

vessel and converted about 1923 to gasoline motor power. She was approximately 110 feet long with steel hull and wooden superstructure of the houseboat type; was equipped with two 125 horsepower Winton engines; her supply of energy was derived from four cylindrical galvanized iron tanks of approximately 500 gallons each in capacity. This vessel was destroyed by an explosion and/or fire in June 1935. Please state your own opinion, in the light of your experience and study, as to whether or not the rules and recommendations set forth in Appendix D of Exhibit 97, constituted a proper standard of prudent and good practice for safety on a vessel of this type as of the years 1930 to 1935.

Mr. Underwood:

Objected to as incompetent, irrelevant and immaterial, the witness not qualified, and as a hypothetical question, sufficient facts are not stated.

A. Yes.

Q. Now, referring specifically to item 1 (g), which provides that "Outlets on gas feed line for drawing loose gasoline for any purpose whatever are prohibited in the engine compartment", what in your opinion is the reason or importance of that rule?

Mr. Underwood:

Same objection.

A. It involves the exposure of loose gasoline below decks, a draw-off connection with an open end, in case of any leakage or accidental derangement, would drip or flow into a closed compartment. The draw-off below decks is used for taking a supply in a container to be carried either to the auxiliaries or to the motors on deck, which again involves the loose handling of gasoline be-

low decks, and all of these are considered by the committee, which drew that rule, as potential hazards warranting the prohibition of draw-off connections.

Mr. Underwood:

I move to strike out particularly the last two or three phrases.

Q. In your opinion, would the fact that gasoline was required for the priming of the engines make any difference?

A. No.

Q. Why not?

A. Because, if they must carry gasoline for priming the motors, it should be carried the same, or as it is recommended for the auxiliaries, in a safety can filled ashore.

Q. Anything impracticable about that?

A. No.

Q. Would it make any difference in your opinion as to the applicability of this provision, whether or not the yacht was in charge of a competent owner?

A. No, it is not a safe practice.

Q. I would like to ask you about this provision with respect to fuel piping. It says, "All fuel piping shall be seamless drawn annealed copper tubing or I P S copper pipe." What is the reason, in your opinion, for that provision?

Mr. Underwood:

Same objection.

A. Copper tubing lets itself to installation in one length with joints only at the ends, and can be more easily worked around obstructions in the leads, and the alternative I P S copper pipe is a superior quality to the commercial run of brass pipe.

Q. What is the advantage of being able to run the pipe with only connections at the ends?

A. Elimination of thread connections which form a nucleus for leaks, either due to vibration or improper setting up or to any accidental blow on the line.

Q. There has been some suggestion here, Mr. Smith, that there is a difference between conditions in Florida and conditions in the north, with respect to the importance of complying with rules such as these contained in Exhibit 97. What can you say as to that?

Mr. Underwood:

Objected to as incompetent, irrelevant and immaterial, the witness not qualified.

A. These rules were drawn to apply to the usual yacht season, which is north in summer or southern winter. They do not differ materially from each other.

Mr. Underwood:

I move to strike that out as not responsive, and purporting to give the operations of the minds of others.

Q. In your opinion, are they affected to any extent by the fact that in southern waters at times of operation of these vessels, it is quite usual to have the windows and other openings of a vessel open?

Mr. Underwood:

Same objection.

A. In the first place, I do not concede that it is any more likely to have them open than it is north in summer.

Q. And would the fact that the vessels can be operated ordinarily with windows open, make any difference in the applicability, for instance, of those provisions with respect to ventilation?



Mr. Underwood:

Same objection.

A. No.

Q. Why is that?

A. Because the portion of the hull to be ventilated is the portion below the water-line and any overhead ventilation has very little effect on the heavier than air gases which may accumulate in the bottom or bilges of the boat.

Q. In this yacht, the Seminole, her engineroom was amidships, and just forward of the engineroom there was a compartment in which there were placed on a platform, approximately two feet above the floor of the engineroom, four gasoline tanks which were galvanized iron tanks forty-two inches in diameter and approximately seven feet high. The width of the compartment forward and aft was only about forty-three or forty-four inches, the length of the compartment was approximately seventeen feet. The compartment was closed off from the engineroom by a steel bulkhead, and the tanks were not accessible for inspection. There was no ventilation in the compartment except four holes through which the filling lines ran, and four holes through which the outlet lines ran, approximately five inches in diameter. Below the level of the tanks there was an opening into the compartment approximately two feet high and twenty-four inches wide. The bilge was approximately seventeen inches below the floor of the engineroom. In your opinion, was or was not that a proper installation for gasoline tanks?

Mr. Underwood:

Objected to as incompetent, irrelevant and immaterial, the witness not qualified, and not sufficient facts stated.

A. I would not consider that a good installation.

Q. And why not?

A. A steel tank, even though galvanized, that is not accessible for inspection, is a potential hazard. The ventilation of that compartment, as you describe it, I would not consider adequate, there is every chance, in the case of any tank leakage, of a dangerous gas pocket forming.

Q. Why do you say that the tanks, not subject to inspection, are potential hazards?

A. Any ferrous metal tank in time becomes subject to corrosion, and more quickly than tanks of non-ferrous metals. Therefore, they do require more careful care in their upkeep, and it is recommended that such tanks should be galvanized after their construction—I don't know what these were. If there is any threads cut in the tanks after galvanizing, that is a serious hazard for a point of corrosion attack.

Q. Do tanks of that character require any treatment for their upkeep?

A. Not as long as the galvanizing is good. The only thing to do to galvanize a tank, is when corrosion sets in, to take it out, it is difficult to make any coating hold.

Q. Did you ever hear of painting such tanks?

A. Yes. It is difficult to make the paint stay on galvanizing.

Q. The engineroom which was just astern of this tank compartment I have referred to, extended the width of the boat, which is about twenty feet, and fore and aft it was approximately sixteen or seventeen feet, but on the starboard side of the engineroom, for a height of two or three feet above the floor, there was a passageway which projected into the engineroom, which was shut off from the engineroom by a steel bulkhead and floor. The ventilation in the engineroom consisted of a

skylight, two fourteen-inch funnel ventilators, one placed each side of the skylight but not extending more than a few inches into the engineroom; on each side of the engineroom there was a window, one on the port side leading outboard, one on the starboard side leading into this passageway. Will you state whether or not in your opinion such ventilation would be adequate for the removal of any gasoline vapors that might accumulate in the engineroom?

Mr. Underwood:

Objected to on the ground that the witness has not been adequately qualified, and on the ground that the hypothetical question fails to state sufficient facts.

A. I do not consider it adequate ventilation of the entire engineroom.

Q. And why not?

A. Because there is no current of air set up in the bilges or below the accommodation floors which would seep through the part of the engineroom most liable to accumulation of dangerous vapors.

Q. There has been a suggestion in the case that there were also in this engineroom, on each side, four two-inch pipes leading from the upper deck to the bilges. On the upper deck, the pipes projected about six or eight inches. They were finished off with goosenecks, which turned back so that they pointed outwards towards the deck about two or three inches clear of the deck. In your opinion, if those were present, in addition to the other ventilation I have mentioned, would the ventilation in that case, in your opinion, be adequate?

Mr. Underwood:

Same objection.

A. Such pipes as you describe form vents, not ventilation. In order to have ventilation, there must be a circulation of current of air traveling from an inlet to an outlet, or induced through an outlet with air coming into the inlet. The set-up you describe does not provide the injection of air to the danger spots—that is the lower part of the compartment. The two-inch pipes on either side will act as breathers for any ventilation under pressure, that is about all, and they would not induce the flow of air out of them except air be forced in at their approximate level of intake.

Q. What would be the effect of having windows on the upper parts of the sides of the engineroom, with respect to air coming in through the ventilators—these fourteen-inch ventilators that I have mentioned?

A. It would no doubt keep the upper part of the engineroom clear and fresh.

Q. And where would the circulation be with respect to any air coming in through the ventilator?

A. The path of least resistance; the upper part of the engineroom, in through the vent cowls and out through the windows or hatch.

Q. It has been suggested here that air coming in through the fourteen-inch ventilator pipes would build up a pressure which would force our bilge gases through the two-inch pipes that I have described. In your opinion would that be so?

A. It would not build up a pressure in an open compartment. The force of air is only a dynamic flow of air through the ventilators that will escape without building up a pressure throughout the compartment.

Q. One other thing I meant to ask you: Are you familiar with these regulations and cover letter of E. D. Wright, a copy of which has been marked Libelants' Exhibit 24?

A. Yes.

Q. Will you tell us what you know about those?



Mr. Underwood:

Objected to on the grounds previously stated with reference to the rules of the National Fire Protection Association.

A. These were originally drawn by Mr. Wright and Mr. Hudson of the National Board of Fire Underwriters, about the same time that the Internal Combustion Engine Committee was working on the 1930 edition of the rules. While neither Mr. Wright nor Mr. Hudson were members of that committee at that time, both were cognizant of what was going on, and information was freely exchanged between them and members of the committee. This was gotten out as a brief statement of fire and explosion hazards to be encountered on boats, and their means of prevention for popular and owner consumption, whereas the N F P A rules are more familiar standards of practice for size of anybody that chooses to read them. This (Exhibit 24) only recites the common causes of fires and explosions, but they are not contradictory to the N F P A in any material detail.

Q. In your opinion, do these regulations set forth in Exhibit 24 afford a reasonable and proper standard of practice for owners of gasoline vessels, as of the year they were published—1929?

Mr. Underwood:

Objected to on the same grounds as previously stated with reference to the rules of the National Fire Protection Association.

A. Yes, as far as they go. They do not take in all the phases that the N F P A rules do.

Q. I notice that these rules of 1930 also contain an Appendix A "Regulations for Freeing Oil Tanks, Bunkers, and Compartments of Dangerous Concentration of Flam-



mable, Explosive or Toxic Gases Previous to Entering for any Purpose or Making Repairs on Oil-burning or Oil Tank Vessels". Do you know what the origin of those rules is?

Mr. Underwood:

Same objections.

A. They were drafted by one of the sub-committees of the Marine Committee, primarily as a standard practice for repair yards.

Q. And in your opinion do they represent a proper standard of practice?

Mr. Underwood:

Same objection as to similar questions.

A. Yes.

#### Cross Examination.

By Mr. Underwood:

Q. Mr. Smith, this Appendix A has to do primarily with the gas-freeing of compartments for the making of repairs?

A. Yes.

Q. Does it ever happen that an explosion occurs after a vessel was declared gas-free by a chemist?

A. Yes. There is a human element in there.

Q. How long have you been employed by the Marine Office, Mr. Smith?

A. Since 1919, when the Marine Office started.

Q. What is the Marine Office of America?

A. It is a trade name.

Q. For what?

A. Under which a group of insurance companies do their marine business.

Q. What insurance companies are those?

A. The original seven I can name—there are a number of other specialty companies that have come in since, but I couldn't give you the whole list without getting a letterhead. The original seven are Continental, the Fidelity-Phoenix, the Hanover, the Firemen's and the American and the Glen Falls and the American Eagle.

Q. Can you remember the others that are now a part of the Marine Office, that you haven't named?

A. No, I couldn't remember the whole list of them; I think there are sixteen all told.

Q. Will you give Mr. Matteson a complete list of those now included in the Marine Office, so he can give them to the stenographer to add to your question?

A. Yes, I will get that.

Q. Will you do that?

A. Yes.

Q. There are sixteen altogether now?

A. I think there are sixteen—I am not quite sure.

Q. About sixteen?

A. About sixteen.

Q. And those insurance companies are your employer?

A. Yes.

Q. And your business is working for them?

A. Yes.

Q. How many of the boats damaged or destroyed in this Seminole fire were insured with those companies?

A. None.

Q. Are you sure about that?

A. So they told me, we had no interest in it.

Q. Do you know that of your own knowledge?

A. Know it of my own—

Q. You say they told you?

A. The office told me we had no interest. I asked them, they said we had no interest in any boats that were destroyed.

Q. And your business is that of a surveyor?

A. Yes.

Q. Primarily damage surveys?

A. Damage surveys have first call on my time, I drop everything else and go on such cases when I have them.

Q. I am thinking about volume. Is that the larger volume or not?

A. No, it is the lesser volume.

Q. And what is the other part of the volume?

A. Inspection preliminary to the underwriting, inspection of the risks on which we have application.

Q. That is, the boat owner wants insurance and he makes an application to one of your companies, and part of your duties consists, on occasion, of examining the vessels that are sought to be insured, is that right?

A. Yes.

Q. Do you fix the rate?

A. No.

Q. Do you look them over to see whether they comply with certain rules?

A. I do.

Q. Are these rules of the National Fire Protection Association one of the rules that you use to see if they comply with them?

A. I do.

Q. And I take it you never insure a boat unless she complies with all these rules?

A. You are mistaken there.

Q. You mean you do insure vessels that don't comply with the rules?

A. There are some minor particulars in there that we have to waive, for one reason or another—in other words, we do not insist on absolute compliance with everything that is in there, in order, in our business, to accept a boat. Minor—

Q. Let's get away from major and minor, because you and I may get into a discussion of what is major and

what is minor. I take it from what you say then that you do insure boats that do not in all particulars comply with those rules?

A. We have such boats on our books.

Q. Do you use the rules of the Bureau for the prevention of explosion and fire on motorboats, in checking over the boats for applicants?

A. Yes.

Q. And I take it you insure some boats that don't comply in all respects with those rules too?

A. Not to every last detail, possibly.

Q. It is a matter of using your own judgment, is it?

A. Well now, there again you bring in the major and minor—there are certain things which we absolutely will not take on a boat.

Q. And whether or not a particular boat's deficiencies, judged by these standards, are sufficient to cause you to recommend against insurance, is a matter of your own judgment, is that right?

A. It is. I would say—

Q. I think you have answered my question, thank you. Do you have any other jobs besides the one you have mentioned—I mean do you work for anybody else besides the Marine Office?

A. No.

Q. That is your only employer ordinarily?

A. My only employer. I wouldn't say I have never done an outside job?

Q. They are your only regular employer?

A. Only regular employer.

Q. Your principal source of livelihood?

A. Yes.

Q. Who is the head of the Marine Section now?

A. Mr. S. D. McComb, Chairman.

Q. And he is President of what insurance company?

A. None—manager of the Marine Office of America.

Q. And he has been head of that committee or section for how long?

A. Since 1920, the same time I came on as Secretary.

Q. Do you own a boat?

A. Not now.

Q. How long since you owned one?

A. The last boat I owned was before the Marine Office of America—before I came with the Marine Office of America.

Q. Was that a power boat?

A. A small one.

Q. How big?

A. Eighteen feet.

Q. Pretty near twenty years ago?

A. About that.

Q. Do you operate a boat?

A. I can.

Q. Do you?

A. No.

Q. Have you operated one since you got rid of your own?

A. Yes.

Q. How many times?

A. Oh, I guess a dozen or some times, maybe more—boats of friends.

Q. Various types of boats?

A. Both power and sail. I have done a good deal of sailing—also power boats.

Q. You don't know of any compulsion exerted on the owners of the power boats to make them comply with the rules of the N F P A or Wright's bureau, do you?

A. Legal, you mean?

Q. Any compulsion, I said.

A. The only compulsion there is, it is difficult to get insurance unless they comply in the major respects.



That is hardly compulsion, because they don't have to insure.

Q. I think you said that these rules might or might not apply insofar as the electrical installation is concerned to a boat existing prior to the 1930 rules, depending upon the extent of the work that would have to be done to bring them up to compliance with the rules?

A. Yes.

Q. And in any specific case, it is the job of the underwriter's surveyor, who is surveying the applicant's boat, to determine whether the condition is such that it would be too extensive or not, is that correct?

A. So far as our office is concerned, it is.

Q. And I take it that applies generally to all the requirements of Appendix D, is that correct?

A. Not so far as our office is concerned. I can cite you some there that we will not take—some conditions—

Q. That is, so far as your office is concerned, no matter how extensive the alterations might be, still you wouldn't take them?

A. No, I don't say that.

Q. Perhaps I didn't put my question properly. Let's see if I can try it again: So far as your office practice is concerned, there are some boats you wouldn't take unless they made changes, no matter how extensive those changes might be, is that what you mean?

A. Yes, but it is hardly from a fire protection standpoint.

Q. Well, this case has been pretty much confined to fire prevention. Let's limit my question to fire prevention. Considering the 1930 rules, insofar as they cover the fire hazard, is it the fact that there are some vessels you won't take unless they make changes, no matter how deeply structural and expensive they may be?

A. Yes.

Q. And I take it there are other situations involving boats that you will pass, although they don't meet the

specific requirements of the 1930 rules, because in your judgment, to bring them up to full compliance, would be too extensive and too expensive, is that correct?

A. No. If they do not meet those requirements in my judgment, we tell them we feel our recommendations are prohibitive, we will go back and do nothing, or we will tell them what we want done. Sometimes it involves a good deal. Sometimes an owner will go ahead and carry out, we help him all we can, and in some details the possibility is that we can reasonably waive letter compliance with some of the requirements.

Q. I don't quite understand your answer, and I would like to get a categorical answer from you if I can. Are there situations where the boat does not comply literally with all the requirements of the 1930 rules, which you will nevertheless pass because the rules are not retroactive and because the changes that would have to be made to bring them up to all the detailed requirements would be too extensive?

A. No. Those are the kind of boats we turn down.

Q. Then are you telling me that you will not pass any boat that does not live up to all the rules?

A. No, there may be some—

Q. Has there ever been a situation where you gave effect to the paragraph that says "No provision in these regulations is to be retroactive as regards construction" by accepting and passing a boat, although she didn't live up, letter perfect, to these rules, because to make her do so would involve too extensive an alteration job?

A. We have done that.

Q. Whether the repairs required or the changes required to bring the vessel up to literal requirement with the rules are too great, is a matter, in the first instance, of your judgment when you are surveyor on the job?

A. Yes. May I add a statement that has a material bearing on that?

Q. Sure, you can add anything you like.

A. Knowledge of the operating personnel and ownership has very considerable weight on how close they are held to the letter compliance with those rules. That is a factor that hasn't been brought out, but a material one.

Q. You mean that you give that weight?

A. We certainly do, where we know an owner and a record, or know a master and engineer—we have acquaintance with a good many.

Q. What is I P S copper pipe?

A. Iron pipe size—standard pipe size.

Q. Well, a feed made up of copper pipe is made up with connections of the same general type as brass pipe, isn't it?

A. That is true. What edition have you there?

Q. 1930.

A. Does it go on and say anything further about how those junctions should be made up?

Q. Of course I am not the witness, Mr. Smith.

A. That is not complete then. Whether it is in that edition or not, I do not recall.

Q. Do you want to look?

A. If I may.

Q. Certainly.

A. (Referring to Libelants' Exhibit 97.) No, it is not in this edition.

Mr. Matteson:

Is this what you are looking for (indicating in Libelants' Exhibit 97)?

A. (Continuing.) Yes, it is too, it is under "(b)", as they approve the material under "(a)", "Fittings and connections for tube shall be at least equal to the solderless pipe of the S. A. E. Standard Practice Code and

for pipe, with the exceptions of ground unions, shall be standard pipe threaded and soldered." It calls for soldering of those threaded connections.

Q. Why do you add that?

A. For the same reason I explained, the general objection to the screwed pipe, as a reinforcement for tightness of the screwed joints in pipe and fittings.

Q. Why do you mention that in answer to my question about whether or not brass pipe is made up the same way as copper pipe?

A. It really wasn't in answer to that question.

Q. Then I want to know why you mentioned it?

A. Because the first question was only as to the approval of tube or I P S copper pipe.

Q. Have you been told that the Seminole's feed line wasn't soldered?

A. No.

Q. You haven't been told that?

A. No.

Q. You just volunteered that because you thought it might be helpful to somebody, is that right?

A. I volunteered it because the copper pipe is specified in there to have soldered joints.

Q. You realize I asked you as to whether the pipe should be made up in one way or another, do you?

A. Yes. It is made up with fittings.

Q. That is all I asked you, isn't it?

A. Yes.

Q. Why did you search out this provision about soldering, and volunteer that?

A. As I remember it, the copper pipe was recommended to be soldered—soldered joints.

Q. You don't know that that might have any application to this case at all?

A. No.

Q. Is there anything else you want to volunteer now?



A. No.

Q. Did I understand you to say, with reference to Paragraph 6 of Appendix D—and suppose you look at it—that none of those requirements are affected by the proviso at the beginning “No provision in these regulations is to be retroactive as regards construction”?

A. Yes.

Q. That is to say, your testimony is that no matter what the boat—how her construction is—these rules apply to her as to ventilation, no matter how difficult it might be to make her line up to those rules letter perfect or how much other ventilation she has, is that correct?

A. Not entirely. My answer to that was—

Q. Just a minute, please. You mean to say then that there might be a boat that would have adequate ventilation although she didn't live up to those rules?

A. No.

Q. You can't conceive of a boat having adequate ventilation without living up to that rule, is that correct?

A. Without living up to the recommendation in here for bilge or bottom ventilation.

Q. She has got to have that, no matter how difficult the changes of construction might be in order to live up to the rules, is that right?

A. Yes.

Q. So that unless she has bilge ventilation, no boat complies with these rules, notwithstanding the proviso about the rules not being retroactive as regards construction?

A. Yes.

Q. That is your opinion?

A. That is my opinion.

Q. That is a little broader opinion than you expressed in answer to Mr. Matteson's questions, isn't it, Mr. Smith?

A. If I recall correctly, I answered Mr. Matteson's somewhat similar question to the effect that the installa-



tion of ventilation to the bilges is not a prohibitively expensive or difficult job, in some way or other, it is not prohibitively an expensive or difficult job, though no two boats are the same—it must be fitted to the individual existing job.

Q. According to my notes, you said almost any boat can be fitted with proper ventilation system without undue structural change. Do you want to strike out the "almost", and say that any boat can?

A. No, I will let the "almost" stand.

Q. Have you had any experience with an explosion on a boat resulting from kerosene in the cooking supply?

A. Not an explosion.

Q. A flash, fire or what?

A. Yes, have had fire.

Q. Do you know what kerosene vapor does with respect to air—is it heavier than air or lighter than air?

A. I don't know about kerosene vapor.

Q. Do you know whether it is heavier or lighter than vapor?

A. Kerosene is certainly heavier than air, but I don't know the formula.

Q. I wouldn't ask you for the specific gravity of it. What is the biggest boat you have operated, Mr. Smith—power boat?

A. 36 footer.

Q. What type of motors did she have?

A. Gasoline motor.

Q. What type—what motor?

A. A Gray, I believe.

Q. One motor?

A. Yes.

Q. Did she have a self-starter?

A. Yes.

Q. Did you have a choke on the carburetor?

A. I don't recall.

Q. Did you ever operate a boat with two 6-cylinder Winton engines in it?

A. No.

Q. Did you ever operate a boat with one 6-cylinder Winton engine in it?

A. No.

Q. Has your operation of power boats been confined to the vicinity of New York?

A. Yes.

Q. In the harbor and in the Sound?

A. Yes.

Q. How far east have you gone—what is the farthest?

A. Port Jefferson.

Q. You have never been aboard the Seminole, I take it?

A. No.

Q. Have you ever made any tests to determine the flow of air through a cowl ventilator in an engineroom?

A. Model—model tests.

Q. Never did it on a life-sized boat?

A. Only by using a little dust shaken from a piece of waste.

Q. To see which way it goes?

A. Yes, to see whether it travels.

Q. How many times have you done that?

A. Several times when trying out just for that purpose.

Q. What type of boat have you done that in?

A. It was on a rather small cruiser, as I recall, some time ago.

Q. Do you remember how big her engineroom was?

A. A small engineroom—about, I suppose, seven or eight feet beam.

Q. And how tight?

A. Four or four and a half feet.

Q. A man couldn't stand erect in it?

A. No.

Q. In operation of the boat, was the engineroom closed?

A. Yes.

Q. A great many boats are built like that, aren't they?

A. Yes.

Q. Where the engine is operated from the pilothouse or some point on deck?

A. Yes.

Q. Where was the gasoline supply tank in that boat?

A. I don't recall that.

Q. Was it in a space that a man could enter?

A. I say I don't recall just where it was.

Q. As a matter of fact, you have seen a great many boats in recent years that have their gasoline tanks entirely surrounded by joiner work, haven't you?

A. Yes.

Q. Where a man can't enter to see them at all, is that right?

A. Yes.

Q. You pass a great many of those, don't you?

A. Copper tanks.

Q. You pass them?

A. Pass them with copper tanks.

Q. The tanks are not subject to visual inspection, is that right?

A. They are copper tanks—yes.

Q. You don't even look to see the gauge of the copper?

A. Can't tell if you did.

Q. Copper too is subject to corrosion, isn't it?

A. To some extent.

Q. A great many of those stock boats are built that way, aren't they?

A. What way?

Q. With tanks in a space where no human being could get for a visual inspection, isn't that so?

A. Yes.

Q. Did you ever make any tests for the effect of ventilation through cowl ventilators in an engineroom the size of the Seminole?

A. No.

Q. Or anywhere near that size?

A. No. /

Q. Do you know the word convection?

A. Yes.

Q. What does it mean to you?

A. Transfer of heat. I wouldn't undertake the definition of it. I answered correctly when I say I know the word, but I wouldn't undertake to define it.

Q. Do you know how the law of convection operates?

A. No. I have read it, but I don't remember it.

Q. I take it that your reason for saying that in your opinion the installation of the Seminole tanks was not good installation from the ventilation standpoint, was because you felt that any vapor or gasoline coming from the tanks would drop down into the bilge, from which it couldn't get out, is that correct?

A. As I understand the construction of the Seminole, there was a tight flat under the tanks.

Q. Tell us what you understand by a flat.

A. It is just a deck in that compartment on which the tanks were resting—it was down below.

Q. How far below the tanks do you understand that was?

A. The tanks were on it.

Q. Didn't you say that you thought those tanks ought to be situated so they could be easily inspected?

A. Not those tanks, because they couldn't be. I said that was one reason why I didn't consider it a good installation, to have those large tanks as closely enclosed—large iron tanks or steel tanks whatever they were—as closely enclosed as described in that compartment.

Q. Because of the flat beneath them, and because they couldn't be visually inspected?

A. Not the flat particularly, not because of the flat, that would retain any escaping vapor rather than letting it get into the bilge. The flat was not a particular objection as such, but the fact of their being inaccessible I did consider it objectionable.

Q. That is an objection in your opinion because if they were subject to inspection one could see them and inspect them and perhaps discover any leak, is that right?

A. Yes.

Q. If there is another method of discovering leakage, I don't suppose that objection stands, does it?

A. Well, I think that depends on what your other method is.

Q. Can you tell much about whether a tank leaks by visual inspection?

A. You can tell very well with gasoline.

Q. What are the signs—does it show up readily?

A. Moisture around the rivets.

Q. You can smell it too, can't you?

A. And you can smell it.

#### Re-Direct Examination.

By Mr. Matteson:

Q. I think, Mr. Smith, you were making an answer when you were cut off, on the question of how closely you follow these N F P A rules in your inspection of vessels?

A. I use those as a standard of practice, and on an existing boat, with other considerations, appraise a risk, get as close compliance as possible where recommendations can be carried out, or if they are too far off the recommended practice, why we just say we would rather not be interested.



Q. Of course the matter of insuring a vessel is in any event a matter of taking a risk, isn't it?

A. It is.

Q. And is it or is it not a fact that rates for insurance are determined by the extent of the risk involved?

A. Yes, they are—at least they try to make them so.

Q. And if in some event one of the insurance companies that you act for was willing to write insurance on the vessel, where the risk was more than ordinary, would or would not that be reflected in the rate?

A. I wouldn't want to answer that question, that is an underwriter's question and one in which I prefer not to express an opinion.

Q. In other words, you don't have anything to do with the underwriting end?

A. They ask me a good many questions on the pros and cons of it, but I do not set the rates.

Q. Those are set by the underwriters?

A. Yes.

Q. Is a yacht of the type of the Seminole, such as we have described here to you, subject to regulation by governmental authority?

Mr. Underwood:

I object to that as calling for a conclusion of law.

Q. Do you know?

A. A documented vessel, if sixteen tons or over, she is under Government inspection.

Q. Do you know of any set of Government rules applicable to a vessel of this type?

A. No.

Q. I take it from what you say, that these rules, of which the 1930 is one, have no force other than moral persuasion?

A. That is right.

Q. I would like you to look at the question for a moment, not from the point of view of an owner that wants to get insurance, but from the point of view of an owner who wants to take reasonable precautions to protect his life and property and the property of others from disaster. From that point of view, in your opinion, are or are not these 1930 rules a proper standard for his conduct?

Mr. Underwood:

I object to that on the ground that the witness has not been qualified, incompetent, irrelevant and immaterial, and improper re-direct examination, not covering anything brought out on cross.

A. Yes, as of 1930.

Q. What is the difference between copper tanks and steel or iron tanks for gasoline, with respect to the question as to whether they should be installed in an accessible place or not?

A. Copper tank is less subject to corrosion from salt air and contact with salt water—salt dampness—seldom you get actual water on them except in an accident.

Q. Is that difference a substantial difference?

A. Yes.

Q. In the question that I asked you about the tank compartment, I didn't intend to convey that the flat, as has been referred to under the tanks, was tight so that there could be no circulation of air or gas between that and the bilge space underneath. As a matter of fact, I would like to incorporate in the question, that there is some evidence in the case that around the edges of the flat there was a little space large enough for a man's hand to be inserted. With that addition, would that make any difference in your answer with respect to the ventilation of the tank compartment?

Mr. Underwood:

Same objection to the question as originally put.

A. No, because then the space has access to the bilge.

Q. Does that make it more or less dangerous?

A. Possibly a little less for the actual tank compartment, and in my opinion more for the bilges under the machinery space.

Q. One more question that I intended to put to you before: The testimony in this case is that a man went into the engineroom of the Seminole after she had been laid up for a period of about two months, and went to the switchboard and lit a match at about the height of his elbows, and held it up to the switchboard to look at some switches on the upper part of the switchboard, and the match went out and nothing occurred. Thereafter, he threw a switch in the lower lefthand corner of the switchboard, at which time there were some sparks noted at about the level of that switch, followed by an immediate explosion. From your experience and investigations of gasoline fires, can you account for that sequence of events?

Mr. Underwood:

Objected to as incompetent, irrelevant and immaterial, entirely speculative.

A. Yes.

Q. How would you account for it?

Mr. Underwood:

Same objection.

A. The gas would be air with a high enough concentration of gasoline vapor which did not extend as high as the level on which he struck the match. It did reach—

or a trail from such a concentration—reached the level on which the switch was thrown.

Q. You speak of a trail of gasoline vapor. What do you mean by that?

A. I mean it does not lie in absolutely level strata, but there may be a pocket—there may be a—I can't describe it otherwise than a streak of air containing a dangerous concentration of gasoline vapor that is irregular in shape and direction, caused by some movement at sometime, possibly not moving at the time, that could carry a flash back to a dangerous concentration in some locality quite distinctly removed.

Q. Would walking through a closed compartment that contained inflammable vapor in the lower parts have any tendency with respect to such matter?

A. I can't answer that, I don't know. Personally I don't think it is know whether walking through would do it or not.

Q. I show you this pamphlet which bears the stamp of the National Fire Protection Association. Can you tell me what that is?

A. It is a list of the fire-hazard properties of certain flammable liquids, gases and volatile solids.

Q. And what is contained in it?

Mr. Underwood:

Objected to.

A. A tabulation of various flammable liquids, gases and volatile solids with their properties as to flash point, ignition temperature, explosive limits and vapor densities.

Q. Is that a publication which you would regard as authentic?

A. Yes.

Mr. Matteson:

I offer it in evidence.

Mr. Underwood:

I object to the pamphlet on the ground that it is not proof of any of the facts stated therein, and on the ground that it is not properly proved.

It is marked Libelants' Exhibit 136.

Re-Cross Examination.

By Mr. Underwood:

Q. Have you ever been employed by an owner to survey a boat and advise him?

A. Yes, I have a few times.

Q. How long ago?

A. I wouldn't say employed, I just did it as a favor.

Q. That is not part of your regular business?

A. No, I did it as a favor for owners.

Q. Two or three times in twenty years?

A. Well, more than that.

Q. Five or six?

A. I suppose a dozen times I have gone on a boat for an owner and told him what I thought of her.

Q. You considered a great many other things than fire hazards, of course?

A. Yes.

Q. This matter of the underwriter insuring being the taking of a risk—that is a risk he takes when he does take it, for a money consideration, isn't it?

A. Yes.

Q. And the marine underwriters are in business for the purpose of making profits on the risks they take, isn't that so?

A. Yes.



Miami, Florida, May 9, 1939, 9:50 A. M.

Reconvened pursuant to adjournment.

Appearances same as heretofore noted.

Morning Session.

Mr. Underwood:

When we suspended the last time Mr. Webber was on the stand, and I do not think his cross examination was quite concluded.

The Court:

All right; we will continue with him.

Mr. Underwood:

If your Honor please, I have with me in Court this morning Mr. Paul Scott, a member of the Bar, who will be a witness. He is associated in the trial of this case with us, and I assume there is no objection to him being in the Courtroom.

The Court:

That is correct.

1531 Thereupon W. L. WEBBER, previously produced as a witness in behalf of the Respondent Phipps, resumed the stand and was examined and testified further as follows:

Cross Examination (Cont'd.)

By Mr. Matteson:

Q. Mr. Webber, there are just two or three things we want to clear up a little further. In your testimony

you said that you went up to the Seminole to get some trophies and silverware, linens and so forth, off the boat. Will you tell us more particularly what those trophies and silverware were?

A. The silver consisted mostly of silver trays, pitchers, ice tongs, ice buckets and various silverware.

Q. Table silverware, you mean?

A. Table silverware, and the linens consisted of sheets and pillow cases.

Q. What was it you referred to as "trophies"?

A. There were one or two cups there; I don't remember what they were; I didn't look at them closely, but there were one or two cups on the boat.

Q. What did you do with all of those things after you took them away from Ft. Lauderdale?

A. Brought them to Miami and they were stored on the third floor of our office.

Q. Whose were these things that were on the boat that you took off at this time, this silverware and trophies?

A. They were just on the boat; whose they were I don't know.

Q. Did the trophies have names inscribed on them?

A. They might have; I don't remember. I don't know, except that there were some trophies there.

Q. What was the nature of the trophies?

A. That I don't remember, sir.

Q. They were such things as prizes in fishing tournaments, things of that type?

A. Might have been; I don't know.

Q. Had you ever been on such an errand on the Seminole before?

A. No, sir.

Q. Had you ever been on the Seminole before?

A. Yes, sir.

Q. More than once?

A. Probably several times.

Q. What occasions did you have to go on it before?

A. I don't remember any specific occasions; I might have delivered a message there that came to the office, delivered a message to the Captain; that is probably about the only thing I can recall.

Q. These things that you removed from the Seminole had they ever been stored in your office before, to your knowledge?

A. Not to my knowledge.

Q. The Seminole was for sale, was she not?

A. I don't know.

Q. Do you know whether there was any intention to use the Seminole again?

A. No, sir; I don't know.

Q. Or that she was to be sold?

A. I don't know.

Q. Now this fellow that was with you, this Jim Davis, you said he was a gardener?

A. Yes, sir.

Q. Where was he a gardener?

A. He works on our properties along the boulevard, cutting grass and trimming shrubbery.

Q. What do you mean by "your properties on the boulevard"?

A. Properties that are owned by the Bessemer Properties which are rented and maintained through our office.

Q. Is that all that he does?

A. That was his job at that time, yes.

Q. Did he ever work in Palm Beach?

A. Not to my knowledge.

Q. How long has he worked as a gardener?

A. Mr. Davis has been with us, I would say, between eight and ten years.

Q. Always a gardener?

A. Yes, sir.

Q. What was his interest in seeing the engines in the Seminole?

A. I would say it was a matter of curiosity more than anything else.

Q. Was there anything curious about the engines of the Seminole?

A. I wouldn't say it was anything curious; he said that he was interested in the mechanism and we were walking along the corridor and it was easy to see the engines, so he just looked through the window for a few minutes.

Q. He spoke about wanting to see the engines, did he?

A. Yes, sir.

Q. So, I take it, you went out of your way to get to see them?

A. No, it wasn't necessary—

Q. At least it took time out from the work you were doing?

A. Yes, sir.

Q. Did he speak of that prior to your going over to look at them?

A. I don't recall; I don't imagine he did.

Q. Did you take him, and show him where they were?

A. We were going by that window on several trips with things, with the things we were removing, and they were right in plain sight.

Q. I gather that he expressed himself as wanting to see the engines; is that correct?

A. I imagine so; it is rather hazy right now.

Q. I take it that most of the details of what you did up there at this particular time are somewhat hazy in your mind except possibly this one particular incident of looking in the window, is that right?

A. I can't say that I remember every detail of the work we accomplished there.

Q. For some reason the matter of stopping at this window and looking in stuck in your mind?

A. I know that we did look in the window, just as I know that we did remove the silverware and the linens.

Q. Another thing that I want a little information on is: This letter that you took there, or the letter which you wrote up there and signed "Seminole Boat Company" with your name, I think you said that you did not remember how you came to sign "Seminole Boat Company" on that letter; is that right?

A. As I recall, I believe that Mr. Hawkins dictated that letter to his stenographer, to his secretary, and I signed it.

Q. I see. You have refreshed your recollection on that since the last time you testified?

A. Yes, sir.

Q. Was Mr. Hawkins an officer of the Seminole Boat Company?

A. I think so.

Q. You mentioned a number of corporations that had their headquarters at this office where you worked; was the Seminole Boat Company one of those?

A. To my knowledge, yes.

Q. Well, what do you know about that?

A. I know very little about it.

Q. What other officers of the Seminole Boat Company—were there any other officers of the Seminole Boat Company there?

A. I don't know.

Q. Were the books of the company kept there?

A. I think so.

Q. Were they kept by the same staff of bookkeepers that kept these other books which you have spoken of?

A. I think so.

Q. Who were these bookkeepers, do you remember; tell us the names.

A. At that time Mr. Handley was the head of the accounting department.



Q. That was in 1935?

A. Yes, sir.

Q. How long had he been head of that department, do you know?

A. For quite some time; probably eight or ten years.

Q. Who were the bookkeepers that worked under him?

A. Mr. Wilson and Mr. Kelly and there may have been others that have since left the company. I don't recall—

Q. Mr. Wilson and Mr. Kelly are still there?

A. Yes, sir.

Q. Is Mr. Handley still there?

A. No, sir.

Q. Where is he now, do you know?

A. He is in New York.

Q. Do you know where in the office the books of the Seminole Boat Company were kept?

A. Where they were stored?

Q. Yes.

A. In the boat, if we have them.

Q. Do you recall seeing them?

A. No, I had nothing to do with the books.

Mr. Matteson:

That is all.

Re-Direct Examination.

By Mr. Underwood:

Q. Mr. Webber, you have read over your testimony since the last hearing?

A. Yes, sir.

Q. Did you find any errors in it?

A. Yes, sir.

Q. On page 1134 you were asked this question: "Did you have a conversation with Mr. Roy Hawkins before you went?"

A. (That is, before you went to the Seminole on April 19th.) And the answer, according to the minutes, is "No." Is that a correct answer?

A. No, it is not.

Q. Did you have a conversation with Mr. Hawkins before you went on April 19th on the Seminole?

A. Yes, sir.

Q. On page 1141, the fourth line from the bottom, will you look at that and tell me whether you have any correction to make?

A. The answer relative to this question: "Now then do you recall whether or not when coming up on this porch you went forward into a room, through a door into a room; or whether you turned to your right as you—" My answer recorded here says, "I don't remember definitely, but I don't believe that we went straight ahead to a little room." My recollection on that, I believe, is that we went straight ahead to a little room.

Q. And to correct that you would strike out the "don't"; is that right?

A. Yes, sir.

Q. Just one further thing: When you were on the Seminole on that day, were there any cots or mattress or springs or parts of a bed, or parts of more than one bed, in the alleyway between the engineroom and the after end of the boat?

A. I don't recall if there were any.

Mr. Underwood:

That is all.

(Witness excused.)

1540 Thereupon JAMES BENJAMIN DAVIS was called as a witness in behalf of the Respondent Phipps, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Underwood:

Q. What is your full name?

A. James Benjamin Davis.

Q. Mr. Davis, by whom are you employed?

A. Bessemer Properties.

Q. They are located at 1317 Biscaine Boulevard?

A. Yes.

Q. How long have you been employed in that business?

A. I guess between eleven and twelve years.

Q. What has been the nature of your work there?

A. Gardener.

Q. Were you employed there as a gardener in 1935?

A. Yes, sir.

Q. Do you remember going to the Seminole with Mr. Webber, in April, 1935?

A. Yes.

Q. How did you happen to go to the Seminole on that day?

A. Well, Mr. Webber came by the shop and says, "Let's take a ride."

Q. What shop?

A. 38th Street and the Boulevard, I think.

Q. You were out working on some property?

A. Yes.

Q. Do you remember what date it was?

A. I think it was April 19th.

Q. Did Mr. Webber have a car?

A. Yes.

Q. What did you do?

A. Well, we went to the Seminole at Ft. Lauderdale.

Q. Had you had any discussion about going to the Seminole at Ft. Lauderdale before Mr. Webber came to you that day?

A. No.

Q. Had you received any instructions from anybody else?

A. No.

Q. You went to Ft. Lauderdale—you went on the Seminole at Ft. Lauderdale?

A. Yes, sir.

Q. Did you know Captain Pilkington?

A. No.

Q. Did you see Mr. Webber meet anybody there?

A. I saw him talking to someone there.

Q. What did you do after that?

A. We went on the Seminole and gathered up the linens and silverware.

Q. How did you get in the Seminole?

A. We went from the stern of the boat.

Q. Was there a door that was locked?

A. Yes.

Q. How did you get through that door?

A. Mr. Webber had the keys and unlocked the door.

Q. On which deck was that?

A. I couldn't be sure just which deck that was; we went in the stern of the boat; I remember that.

Q. Could you indicate on the blueprint, I show you Respondents' Exhibit "A" which is a blueprint of the Seminole and ask you if you can indicate where you entered the boat.

A. Well, I think we entered it from back in here from where.

Mr. Underwood:

Indicating the after end of the lower deck.

- Q. What did you do while you were on the Seminole?  
A. Well, we went from room to room and got all the linens and silverware.  
Q. What did you do with the linens and silverware?  
A. Brought it back to the office.  
Q. You carried it off the Seminole?  
A. Yes.  
Q. Can you give us some idea about how many trips you made from the Seminole to the car with the bundles?  
A. I guess about eight or ten trips were made.  
Q. How big were the bundles you carried?  
A. Oh, just a good size armful.

Mr. Underwood:

Indicating about two feet square.

Mr. Matteson:

I think so.

(By Mr. Underwood):

- Q. Did you go in the staterooms in the forward part of the boat, forward of the engineroom?  
A. Yes, went all over.  
Q. Do you remember passing through the alleyway that leads alongside the engine-room?  
A. Yes.  
Q. Did you notice anything about any window there?  
A. Yes, I do.  
Q. Will you tell us what you noticed about that window?  
A. Well, the window in the engineroom is only—

The Court:

I cannot hear you. You will have to speak louder.

A. (Continuing.) The window at the engineroom, I noticed that window very well, because I stopped and looked in the engineroom.



Q. Do you remember whether that window was open or closed when you got there?

A. Open.

Q. How long did you stay there and look in?

A. Oh, just long enough to take a look at the motors; not over a minute, if that long.

Q. When you left there how did you leave the window?

A. Left it open.

Q. Did you observe any window on the opposite side of the engineroom?

A. No, sir.

Q. Do you know whether there was a window there?

A. I don't.

Q. Did you smell any gasoline while you were standing at the engineroom window?

A. No.

Q. Or at any other time that day?

A. No.

Q. Did you see any gasoline or hear any dripping?

A. No.

Q. Tell us how it happened that you stopped and looked at that window.

A. Well, I always was interested in motors, see, and in passing by I just stopped and took a glance, looked at the motors just when I stopped. I always was interested in motors.

Q. Did you observe any cots or bed springs or mattresses in the alleyways on the Seminole that day?

A. I don't remember.

Q. You don't remember whether you did or didn't, or you don't remember seeing any?

A. We didn't bring any out, and I don't remember seeing any.

The Court:

Mr. Underwood, I just do not recall the relative dates of this visit and the date of the conflagration.

Mr. Underwood:

This was on April 19, your Honor, and the fire was on the 24th day of June; approximately two months.

The Court:

All right.

Mr. Underwood:

That is all.

### Cross Examination.

By Mr. Matteson:

Q. You work for Bessemer Properties?

A. Yes, sir.

Q. Do you still work for them?

A. Yes, sir.

Q. And you worked for them at this time in 1935?

A. No; I was with the Biscayne Boulevard—

Q. Biscayne Boulevard?

A. Yes.

Q. Who employed you?

A. Mr. Webber.

Q. He is the man that hired you?

A. Yes.

Q. How did you get your pay?

A. Got it from the Biscayne Boulevard.

Q. Did you get it in cash or by check?

A. Well, it seems to me that we signed a check and got the money right there at the office at the time.

Q. You signed something at the office and got the money; is that it?

A. Yes.

Q. How were you paid, were you paid by the day, week or month?

A. By the week.

Q. Did you get your pay Friday night?

A. Friday night.

Q. Was there any difference in the way you got your pay this week that this happened, when you went to Fort Lauderdale, than any other week, or was it just the same?

A. No; my salary was just the same; straight time.

Q. All paid in one sum?

A. Yes.

Q. What were you doing when Mr. Webber called for you, do you recall?

A. Yes; I was working the yard.

Q. In what yard was that?

A. I am pretty sure it was on 38th Street and the Boulevard; it was the Katy Apartments at that time; it is the Magnolia Apartments now.

Q. That was the Biscayne Boulevard property at that time, was it?

A. Yes, I suppose so; I was working for them, but I couldn't say for sure about that.

Q. Did Mr. Webber tell you each day where you were to go to work that day?

A. No. You see, we had so many places up the Boulevard to keep up, and we knew all the places. If there was anything extra that turned up, he would tell us, like somebody would move out or something like that.

Q. If any special orders were received you got them from Mr. Webber?

A. Yes.

Q. He was your boss?

A. Yes.

Q. Do you know how many packages of linens you got out of the Seminole?

A. Well, I don't know just how many packages we taken out.

Q. When you took them out did you pile them on the deck or on the shore or did you take them to the car; just what did you do?

A. I don't know just how he handled that, but I think we taken them to the car.

Q. You don't remember about that?

A. No.

Q. Which rooms did you get the linens out of; do you remember that?

A. No, I don't remember that; I do remember that we went all over the boat; we went all over the places in the boat and got the stuff.

Q. Did you see any of these trophies that have been spoken of?

A. What?

Q. Trophies—something that has been described as trophies or cups that were taken off the Seminole.

A. You mean silverware?

Q. Yes; prize cups, or something like that.

A. I am not sure about that. I know we taken off quite a bit of silverware.

Q. Did you notice how it was marked?

A. No.

Q. How was the silverware taken off?

A. We carried it off.

Q. Did you carry it off in loose pieces or in your hands or how?

A. No, it seems to me that we just got an armful and taken it off; I am not sure about that.

Q. An armful of loose pieces, you mean?

A. I can't say whether it was loose pieces, or whether we had them in a box.

Q. You don't remember whether you had a box to put them in or not?

A. No.

Q. Did you get anything out of the after cabin, the crew's quarters, on the Seminole?

A. Yes.

Q. What did you get out of there?

A. I think we got sheets and pillow cases, and something like that.

Q. Did you get anything out of the Captain's quarters?

A. Well, I guess we did; I couldn't say, because we was all over the boat, we got everything that we could find, all linens and blankets, and such as that.

Q. Do you know what time you got there?

A. I am sure it was getting pretty close to quitting time when we got back to Miami; it was probably around quitting time. We must have gone up there about three o'clock, or maybe a little later.

Q. How long were you there?

A. I guess between forty-five minutes and an hour.

Q. What sort of a car did you have?

A. We had a Ford sedan.

Q. Ford sedan?

A. Yes.

Q. You piled this stuff all in the back of the sedan?

A. Yes.

Q. When you got to Miami you say it was about quitting time?

A. Yes.

Q. Did you unpack the car that night or the next day, or how was that?

A. I don't think I helped with that; I am pretty sure that the colored boy or the porter there done that.

Q. Well, the one detail about this entire trip that stands out in your mind is that you remember stopping at the engineroom window; is that right?



A. Yes, I remember that very well, because I was always interested in motors; it didn't make any difference where I was; if I was going out of here and I saw a motor, I would stop and look at it, and that is how I know them so well.

Q. How long did you stay at the window, do you recall?

A. I don't think we stayed but just a minute, long enough to take a glance and go on; of course we had armsful of this stuff.

Q. What kind of motors were they; do you know?

A. I don't.

Q. Do you know how many of them were there?

A. I couldn't say; it seems to me there was three, but I couldn't say for sure about that.

Q. Did you notice this window in the engineroom—did you notice how it was made?

A. No, I didn't.

Q. Whether it had a wood frame or what kind of glass there was in it at that time?

A. No.

Mr. Matteson:

That is all.

#### Cross Examination.

By Mr. Botts:

Q. Mr. Davis, was this linen and silverware that you got,—was it assembled in packages when you got there, or did you have to put it in packages?

A. We put it in packages, I am pretty sure?

Q. You are pretty sure?

A. Yes.

Q. Some of it could not have been in packages?

A. I couldn't say for certain about that.

Q. It has been quite some time ago?

A. Yes.

Q. You don't remember a great many of the details of what transpired there, is that true?

A. That is true.

Q. The trip was of no particular importance to you?

A. Not at all.

Q. Had you ever made trips like that before?

A. No.

Q. You just recall that you went up there and got some linens and silver and came back, and that's about all you recall about it?

A. Yes.

Q. Do you remember whether the shades were pulled on the windows or not?

A. No, I don't.

Q. Now in this alleyway that you went up through, do you remember whether there was a window open through the outside of the boat from that alleyway or not?

A. No.

Q. You don't remember that?

A. No, I don't remember that.

Q. Now then this engineroom—do you remember whether there was a window on the opposite side of the engineroom to the one that you looked in?

A. No.

Q. You don't remember that?

A. No.

Q. Now you say that your best recollection is that there were three motors in the engineroom?

A. Yes, but I couldn't say for sure about that, because it was just only a glance at the motors.

Q. You just glanced at them?

A. Yes.

Q. Do you know anything particular about motors?

A. Well, I am not exactly called a mechanic, but I do like to fool with them.

Q. Well, now, Mr. Davis, were those large motors or small motors that you saw in there?

A. They looked pretty large to me.

Q. All three of them were the same size?

A. I couldn't say.

Q. You didn't pay that much attention to them?

A. No.

Q. Do you remember how the motors were placed in relation to each other?

A. No, I don't.

Q. You don't know whether they were in line, one motor ahead of the other, or all three of them parallel to each other?

A. No.

Q. You don't remember that at all?

A. No.

Q. Now then, Mr. Davis, what else did you see in that room, the engineroom?

A. Well, that is about all that I looked at; I was just interested in glancing at the motors.

Q. Now this window that you saw, was that a glass window or was it just an opening; do you recall—

A. I am pretty sure it was a window. I know there was an opening there.

Q. You know there was an opening there?

A. Yes.

Q. You don't know whether it was glass or not?

A. I am not sure.

Q. You are not sure?

A. No.

Q. You did not enter the engineroom, did you?

A. No.

Q. You just stood there in front of this opening for a few seconds, or perhaps a minute, or something like that, and you glanced into the engineroom, is that right?

A. Yes.

Q. Now then when was the first time after this trip that you discussed this trip with anyone?

A. I don't recall just the first time.

Q. Well, now I believe you came up here to testify some six or seven or eight weeks ago?

A. Yes.

Q. Was your first discussion of this matter just relatively a short time before you came up here to testify?

A. Yes.

Q. Just a short time before that?

A. Yes. No, not the first—

Q. The first occasion when you discussed this trip, Mr. Davis, was just a short time before you came up here on the previous occasion to testify, is that right?

A. No.

Q. When did you first discuss this trip with anyone?

A. I don't know. It seems to me that it was about a month afterwards, after the boat "went up."

Mr. Underwood:

You mean after the fire?

The Witness:

After the fire.

(By Mr. Botts):

Q. Who did you discuss it with then?

A. I don't recall his name.

Q. Where did you discuss it?

A. Discussed it at the Bessemer office.

Q. What was the subject of the discussion?

A. Well, I was just asked the questions that I knew about it.

Q. You told them about getting the linen and silverware off the boat?

A. Yes.

Q. Did you tell them anything else?

A. I told them all I knew about the—

Q. I would like for you to tell me—you told them the things that you thought were important?

A. No; I didn't; I told them just the things I knew about the matter.

Q. Just what did you tell them?

A. Well, it was very little I knew; I knew Mr. Webber came by and got me and carried me up there, and we got the silverware and linens off, and also knew that the engineroom window was open, because I glanced in there, taken a look, and that's about all I knew about it.

Q. When did you next discuss this matter?

A. Just a few weeks ago.

Q. With whom did you discuss it at that time; with Mr. Underwood?

A. That's right.

Q. You have not discussed it in the meantime?

A. Since then?

Q. I say, you have not discussed it between these two occasions?

A. No.

Q. On the first occasion when you discussed it did you make a written memorandum; was a written memorandum made of that discussion?

A. I think so.

Q. When you discussed it with Mr. Underwood did he have a written memorandum of your previous testimony?

A. Yes.

Q. Mr. Underwood had a written memorandum of your previous testimony, did he, when you discussed it with him a few weeks ago?

A. Yes.

Q. Did he show you that written memorandum?

A. Yes.

Q. You read it over?



A. Yes.

Q. Your testimony then is based largely on that written memorandum, isn't it?

A. Well, not exactly.

Q. You say your recollection is quite hazy about many of the details up there. As a matter of fact, didn't you rely, in discussing it with Mr. Underwood—didn't you rely to a considerable extent on this memorandum which had been made previously when your memory was naturally fresher?

A. Oh, yes.

Q. Now, Mr. Underwood showed you that memorandum at the time you discussed it with him?

A. As a matter of fact your testimony now is based more on the refreshment of your memory from that written memorandum than it is from your actual memory of the event, is that true?

A. No.. what I actually know about it I remember.

Q. Now do you know who prepared that memorandum?

A. I don't.

Q. Did you sign it?

A. I did.

Q. Now then did anybody impress you with the idea that it was particularly important for you to remember about looking in that engineroom?

A. No.

Q. Didn't tell you that that was particularly important at all?

A. No.

Q. Did they tell you that the fire started in the engineroom?

A. No.

Q. They didn't tell you that?

A. No.

Q. Did you know that the fire started in the engineroom?

A. I don't know how it started.

Q. Now, Mr. Davis, just what is it, if that was a glass window and you just stopped casually and looking in the window—just what is it that impresses you that the window was open when, if it was closed and was a glass window, you could have looked in just the same anyway?

A. Well, what impresses me was—I leaned over—it seems to me that struck me along here—I leaned over and looked in the engineroom, and that's why I am sure about that.

Q. A few moments ago you just told us that you stood looking in the window.

A. Yes.

Q. And I asked you if you went in through the window and you said you did not.

A. That is right.

Q. You didn't recall then that you leaned through the window, did you?

A. No.

Q. While you were stopped and was looking at this window, looking at the engines, what was Mr. Webber doing?

A. He was behind me and he stopped a minute or two.

Q. What makes you think it was the 19th of April that you went up there?

A. I know it was in April.

Q. All right; what makes you think it was the 19th?

A. I am pretty sure that is the date.

Q. Why?

A. It seems to me that is what the affidavit I gave, or whatever you call it, says.

Q. You do not have any independent recollection of that date now, do you?

A. I don't.

Q. Your sole impression in that respect at this time is gathered from what is supposed to have been in that memorandum, is that right?

A. Just a few items, yes.

Q. Your recollection as to the date—your testimony now as to the date when you think you went up there,—your testimony is not based upon any independent recollection but is based upon that written memorandum?

A. Yes.

Q. Is that right?

A. Yes.

Q. Now how was that window operated; can you tell us that?

A. No.

Q. You have been on boats, haven't you?

A. Oh, a couple of times; I know a very little bit about boats.

Q. You have been on boats and have seen these windows that you lift up and drop down in the side of the hull of the boat, haven't you?

A. I never noticed.

Q. Do you know, Mr. Davis, whether this window was a window that you lowered down in a partition or raised it up on hinges, or slid it up, or was it hinged to the side; do you know anything about that window that way?

A. No.

Q. You don't know anything in the world about that?

A. No.

Q. As a matter of fact, Mr. Davis, you didn't see the window at all; you just saw an opening, didn't you?

A. An opening was there.

Q. You don't know whether that window was glass or wood or composition, or what type it was?

A. No.

Q. You don't even know whether there was a window; you just know there was an opening there?

A. I know there was an opening there.

Q. Now when you look in—were these engines that you looked at,—were they opposite you or to your right or to your left, do you remember?

A. I couldn't be sure about that.

Q. As a matter of fact, you don't know how many engines there were in there?

A. No.

Q. You don't know where those engines were located, do you?

A. No; I know they were just there.

Q. They were in the engineroom?

A. Yes.

Q. Other than that you don't know?

A. No.

Q. Did you see any battery boxes or anything in there?

A. No.

Q. Do you know what the size of that engineroom was?

A. No.

Q. As a matter of fact, Mr. Davis, there is only one circumstance with reference to that engineroom of which you want to testify positively, and that is that there was an opening there?

A. Yes.

Q. And that that opening wasn't at that time enclosed by glass or otherwise?

A. Yes, sir.

Q. Other than that you are not positive about anything; that's the fact, isn't it?

A. I am positive about taking the linens and silverware off.

Q. I am talking about the engineroom. The only thing of which you are positive concerning that engineroom is that there was an opening there in that wall, and that that opening was entirely open and not covered by glass?

A. Yes.

Q. Other than that you are not positive about a thing concerning the engineroom, are you?

A. No.

Q. The thing that interested you wasn't the hole in the wall, but the engines, wasn't it?

A. That's right.

Q. Yet you didn't or you don't know anything about the engines?

A. Well, I didn't take time to look them over; just glanced at them.

Q. You were not interested in holes in the wall, were you?

A. No.

Q. You noticed that?

A. Yes.

Q. You were interested in the engines but you didn't notice them, is that right?

A. Yes.

Mr. Botts:

That is all.

(By Mr. Matteson):

Q. When you stood at this window and leaned on it, where did it come on you?

A. I couldn't be positive, but it seems that it came somewhere along here (indicating).

Q. Will you stand up and indicate to us?

A. Just about like that (indicating).

Q. It reached about the height of your belt?

A. Yes.

Q. When you got these linens did you get them off the beds or had somebody taken them off the beds before?

A. I am pretty sure they were taken off the beds; some of them were taken out of the drawers; I couldn't be positive where it was all taken from; we went all over the boat taking this stuff; picking this stuff up.

Q. At least some of it you yourself got off the beds?

A. I am pretty sure.

Q. And that refers to linens and sheets?



A. Yes.

Q. And blankets and covers?

A. Yes.

Q. Where was the silverware; was that on the table?

A. It seems to me that is was.

Mr. Matteson:

That is all.

(By Mr. Botts):

Q. Mr. Davis, do you have that memorandum with you at this time?

A. No.

Q. When was this last time you read it?

A. Well, I couldn't say just to the exact date.

Q. Where did you keep that memorandum?

A. I didn't keep it.

Q. Someone else kept it?

A. Yes.

Q. And they produced it to you at the time when it was exhibited to you?

A. Yes.

Q. Do you suppose you could get that memorandum now?

A. I don't know.

Q. I wish you would try to get that memorandum; I would like to see it. Will you make an effort to locate that memorandum and bring it up here?

A. I don't know anything about it.

Q. How is that?

A. I don't know anything about it; I don't know who has it or what.

Q. Do you even remember what was on that memorandum was what you had said some three and a half to four years ago?

A. Yes.

Q. You remember that?

A. Yes, sir.

Q. Now do you remember that because it was on a paper that was exhibited to you—by the way, who told you that that was your memorandum?

A. Well, they gave me the memorandum and my signature was on it; I signed it.

Q. Isn't it a fact that until you read that memorandum your memory about the whole transaction was just as hazy as it is now about the engine room?

A. Well, I had forgot about the whole thing, you know.

Q. When you stopped to look at the engines, do you remember whether you were going forward or towards some of the rooms up there, or were you coming aft with the bundles?

A. We were coming out with the bundles.

Q. You had bundles in your arms?

A. Yes.

Q. Do you remember what kind of bundles you had?

A. I think it was sheets and pillow cases.

Q. You had a bundle of sheets and pillow cases in your arms?

A. Yes.

Q. How did you lean through that window with these bundles in your arms?

A. Leaned through with them on my arm.

Q. You couldn't lean over with the bundle of sheets in front of you?

A. Not that far; not too far.

Q. Then you didn't lean through the window, did you?

A. Yes.

Q. In what part of that wall of the engineroom was that window; was it forward of after or centered of the engineroom wall?

A. I don't know.

Q. And you say no one ever suggested to you that they considered it particularly important for you to remember

the one and single and sole fact that you say you now remember, and that is that window was open?

A. Yes.

Q. And no one ever told you that they thought that was important?

A. Yes.

Q. Do you have any explanation as to why you remember that and you don't remember nothing else?

A. The only thing I can say it that I remember very little about the whole thing.

Q. I gather that. Do you have any explanation as to why that one single, solitary fact you remember, and your mind is almost a blank about everything else. Do you have any explanation of that?

A. No.

Mr. Botts:

That is all.

#### Re-Direct Examination.

By Mr. Underwood:

Q. Mr. Davis, do you remember anything about the appearance of the engines?

A. Well, I remember about the appearance of the engines—it seems to me that they were painted gray, and were nice and clean; that was the main thing I noticed, and I said something about it to Mr. Webber and he stopped.

Mr. Underwood:

That is all.

(Witness Excused.)

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Thereupon, RAY H. HAWKINS was called as a witness in behalf of the Respondent Phipps, and

having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Underwood:

Q. What is your full name?

A. Ray H. Hawkins.

Q. Mr. Hawkins, what is your business?

A. I am employed by the Bessemer Properties, Inc.

Q. Where do you live?

A. 273 Northeast 98th Street.

Q. How long have you been employed by the Bessemer Properties or its predecessors?

A. Since September, 1926.

Q. The office of that company is at 1317 Biscayne Boulevard?

A. That is right.

Q. What was your employment in the spring or the early part of 1935?

A. It was the same; it was then Biscayne Boulevard.

Q. Do you know the house-boat Seminole?

A. I do.

Q. Do you remember when you first had anything to do with the Seminole?

A. You mean when I first saw her?

Q. Yes; anything whatever.

A. I saw the boat in 1925 or 1926, but I never had anything to do with her.

Q. When did you first formally have anything to do with the Seminole?

A. It must have been 1929.

Q. Do you remember when the Seminole Boat Company was organized?

A. I do; that was in 1929.

Q. Do you mean at the time the Seminole Boat Company was organized, was the first time you had anything particular to do with the Seminole?

A. I was familiar with the boat. Of course the boat was owned by the principals of the company prior to that time.

Q. Are you an officer of the Seminole Boat Company?

A. I am.

Q. What officer are you?

A. Secretary.

Q. Do you remember when you became secretary?

A. It was shortly after the incorporation; I am not quite sure as to the date; the records will show that.

Q. I show you a paper which is marked "certified copy of certificate of incorporation of Seminole Boat Company", which has been marked Libelants' Exhibit 81 for identification. Will you identify that and tell me what it is?

A. That is the certificate of incorporation of the Seminole Boat Company.

Mr. Underwood:

I offer it in evidence.

Mr. Matteson:

No objection.

Mr. Botts:

No objection.

The Court:

It will be admitted.

(Thereupon the certificate of incorporation of the Seminole Boat Company above referred to was marked Respondents' exhibit "T").

Q. I show you a book which is marked Seminole Boat Company Minute Book, previously marked Libelants' Exhibit 82 for identification; can you identify that book and tell me what it is?

A. That is the Minute Book of the Seminole Boat Company.



Mr. Underwood:

I offer it in evidence.

The Court:

Couldn't we save time by letting it be admitted, and then you examine it at your leisure?

Mr. Botts:

That is quite all right.

Mr. Matteson:

We will reserve our objections.

The Court:

Let it be admitted subject to objections to be hereafter made, if any.

(Thereupon the book above referred to was marked Respondents' Exhibit "U").

Q. I show you another book which has on the outside; "Seminole Boat Co.", which has been previously marked Libelants' Exhibit 79 for Identification. Will you identify that book and tell me what it is?

A. That is the stock book of the Seminole Boat Company.

Mr. Underwood:

I offer the book in evidence.

Mr. Matteson:

Under the same arrangement.

The Court:

Let it be admitted subject to objections hereafter to be made, if any.

(Thereupon the book above referred to was marked Respondents' Exhibit "V").

Q. I show you three papers which purport to be stock certificates of the Seminole Boat Company, Certificates Numbers 4, 6 and 8. Can you identify the signature at the lower left-hand and the lower right-hand corner of these papers?

A. I can.

Q. Whose signatures are they?

A. Mr. Scott's and mine.

Q. On all three of them is that true?

A. Yes.

Q. Can you say whether or not those certificates were issued on or about the dates they bear?

A. They were, sir.

Mr. Underwood:

I offer these three certificates in evidence, and ask that they be marked Exhibits W-1, W-2 and W-3.

Mr. Matteson:

Under the same arrangement.

The Court:

Let them be admitted subject to objections hereafter to be made, if any.

(Thereupon the stock certificates above referred to were marked, respectively, Respondents' Exhibits W-1, W-2 and W-3).

Mr. Underwood:

So that the record will show, may I state that certificate Number 4 is made out to John S. Phipps and covers five shares; and that certificate Number 6 is made out to John S. Phipps and covers fifteen shares, and certificate

Number 8 is made out to Mrs. F. E. Guest, and the same covers 20 shares. All of them bear date prior to this fire on June 24th.

The Court:

Are they outstanding and held by these owners, or were they surrendered and—

Mr. Underwood:

I will ask the witness.

(By Mr. Underwood):

Q. Are these outstanding certificates?

A. Yes.

Q. Are there any other certificates outstanding at the present time?

A. No.

Q. I will show you another book which says, "Seminole Boat Company", which is marked Libelants' Exhibit 76 for identification. Tell me what that is.

A. That is the journal ledger.

Q. Of the Seminole Boat Company?

A. Yes.

Mr. Underwood:

I offer that.

The Court:

Let it be admitted subject to the same ruling.

(Thereupon the book above referred to was marked Respondents' Exhibit "X").

(By Mr. Underwood):

Q. I show you two files which are entitled "Seminole Boat Company Journal, Checks and Vouchers", which

have previously been marked Libelants' Exhibits 77 and 78 for identification. Can you tell me what these are?

A. These are the voucher files and bill files of the Seminole Boat Company.

Q. Of the Seminole Boat Company?

A. Yes.

Mr. Underwood:

I offer these in evidence.

Mr. Matteson:

Under the same arrangement.

The Court:

The same ruling.

(Thereupon the files above referred to were marked Respondents' Exhibits "Y" and "Z").

(By Mr. Underwood):

Q. I show you a further book, which appears to be a check book, which says on the outside, "Seminole Boat Company Check Book". Can you identify that?

A. Yes.

Q. What is it?

A. It is the check book of the Seminole Boat Company.

Q. Can you tell me approximately when the Seminole Boat Company's Bank account began and when it ended, approximately?

A. It began in November 1928 and ended in 1931.

Q. It was closed out in 1931?

A. Yes.

Mr. Underwood:

I offer this in evidence.

Mr. Matteson:

Under the same arrangement.

The Court:

Let it be submitted subject to the same ruling.

(Thereupon the check book above referred to was marked Respondents' Exhibit AA).

Q. Mr. Hawkins, I show you a batch of papers, will you tell me what these are?

A. I assume they are check vouchers of the Seminole Boat Company.

Q. And bank statements?

A. Bank statements and checks—canceled checks.

Mr. Underwood:

If your Honor please, I don't think these have any real bearing on the case, but I will offer them and ask that they be marked for identification, so my opponents will have an opportunity to examine them if they wish; but I will not offer them in evidence so as not to encumber the record.

Mr. Matteson:

Were they marked for identification before?

Mr. Underwood:

I think not.—BB for identification.

The Court:

They will now be admitted for identification; that will put the burden on you to remember them if you want to offer them, and you may keep track of that.

Mr. Underwood:

I might say for the record that that does not quite include all of the checks of the Seminole Boat Company



that were issued, by some have already been marked; there were two made out to Captain Pilkington, which are identified, and which I will offer in evidence,—that are not now in evidence.

(The said check vouchers were marked Respondents' Exhibit bb for identification.)

The Court:

As I understand it, these, together with the others that you just mentioned, account for all the checks issued that you are able to supply?

Mr. Underwood:

That is my understanding; I haven't checked them one by one against the check book, but I believe that is correct.

Q. Now, Mr. Hawkins, who was in charge of the office, 1317 Biscayne Boulevard, at the time the Seminole Boat Company was incorporated?

A. Mr. Paul R. Scott.

Q. From the time of the incorporation of the Seminole Boat Company in the fall of 1928, how long approximately did Mr. Scott remain in charge of the office?

A. I believe it was through about 1934.

Q. And prior to the time that—he went north at that time?

A. Yes, sir, he had been making frequent trips during every summer of '29 to '34.

Q. Now from the time of the incorporation of the Seminole Boat Company, who was it, if you know, who made the routine decisions about maintenance and up-keep and storage of the Seminole?

A. I did while in Miami, working under Mr. Scott.

Q. And when Mr. Scott was not there, what was the situation?

A. I had charge.

Q. Do you remember who the Captain of the boat was at the time of the incorporation, and following that time?

A. Shortly after the incorporation, Captain W. P. Baker.

Q. Will you remember whether the corporation made any contracts with Captain Baker?

A. They did.

Q. I show you a document and ask if you can identify that.

A. Yes, sir, this is the contract of employment between the Seminole Boat Company and Captain Baker.

Mr. Underwood:

I offer that: Before I offer it,—

Q. Who executed it on behalf of the Seminole Boat Company?

A. Mr. Scott and myself.

Q. Do you recognize Mr. Scott's signature?

A. I do.

Q. And that is your signature?

A. It is.

Q. Do you recognize the signature of W. P. Baker?

A. Yes, sir.

Q. Is that Captain Baker's signature?

A. Yes.

Mr. Underwood:

I offer that.

Mr. Matteson:

Do you want to make this under the same arrangement?

Mr. Underwood:

It is satisfactory to me.

The Court:

All right; the ruling is it will be admitted subject to objections hereafter to be made, if any.

Mr. Underwood:

I assume that any objections to be made, will be made while Mr. Hawkins is available.

The Court:

Will you be here so far as you know, the next ten days?

A. Yes, sir.

(The said contract was admitted in evidence and marked Respondents' Exhibit CC.)

Q. What did Captain Baker do with the Seminole?

A. He attempted to obtain charters for it.

Q. Generally what was the arrangement with Captain Baker, and tell us what he did.

A. Well, I think the contract covers that more specifically; but as I remember it, the arrangement was that he was to get a drawing account or salary, and attempt to charter the boat to anybody who was interested in it; and get a percentage of any net profits.

Q. Was the boat advertised for charter?

A. Yes, sir.

Q. Was she put out into the open market for charter?

A. Yes, sir.

Q. And did the Seminole Boat Company enter into the business of chartering the Seminole?

A. They did, sir.

Mr. Matteson:

If you Honor please, I move to strike out the last answer, as a conclusion. We should have the facts, just actually was done. The general statement that they were in the business of chartering, is simply a conclusion.

The Court:

What is the answer objected to?

(The last question, and answer were read.)

The Court:

Is that what you object to?

Mr. Matteson:

Yes, sir; I think that is merely a conclusion.

The Court:

I think you can cover that by cross examination. I will deny the motion to strike.

Q. Was she chartered from time to time Mr. Hawkins?

A. Yes, sir.

Q. Was charter hire received from time to time?

A. Yes, sir.

Q. Approximately how long did that arrangement last?

A. With Captain Baker, sir?

Q. Yes.

A. I think it was under written contract through '31; but as a matter of fact, Captain Baker had access to the boat for charter at any time, if he had a party that was large enough to charter that boat, he knew it was available.

Q. For how long did that situation continue?

A. Right up until the boat was destroyed.

Q. Do you recall how the Seminole Boat Company paid its bills, in the beginning?

A. After the incorporation?

Q. After the incorporation.

A. Yes; when we had our own check accounts, the Seminole Boat Company borrowed money from the Boule-

ward Mortgage Company, and most of the bills were paid by a Simmon, who was paymaster.

Q. And what happened to those debts to the Boulevard Mortgage Company?

A. They were charged to the stockholders of the company.

Q. And do you know in what proportion?

A. I presume equally.

Mr. Matteson:

If your Honor please, I think the answer ought to be definite; there ought not to be any approximation.

Mr. Underwood:

That will come out eventually.

Mr. Matteson:

I move to strike out the presumption.

Mr. Underwood:

I have no objection.

The Court:

All right.

Q. Now ~~from the time~~ the Seminole Boat Company closed out its bank account, down to the time the boat was destroyed, can you tell me how the bills incurred at Miami were handled and how they were paid?

A. Yes, sir; they were paid through the Boulevard Mortgage Company and charged to the Seminole Boat Company.

Q. From the books of the Boulevard Mortgage Company?

A. Yes, sir.

Q. Now when she needed ordinary repairs or something done to her in the way of maintenance, or had to



go to a ship yard to be hauled out, who was it decided that she should go, and how much to spend?

A. I did.

Mr. Matteson:

If your Honor please, I object to that general question; I think it ought to be more specific than that? Just a general conclusion, covers a lot of territory; I think we ought to have specific facts brought out. However it can be covered on cross examination.

The Court:

I think so; I think that is all right.

Q. Now Mr. Hawkins, coming down to 1935, do you remember the Seminole being brought from Pilkington's basin at Ft. Lauderdale down to Miami?

A. Yes, sir.

Q. Mr. Hawkins, I show you a letter dated February 23, 1935, marked Defendants Exhibits F; that is a copy of a letter; can you tell me whether or not that is a letter you sent to Captain Pilkington?

A. That is a copy of the letter, yes, sir.

Q. In that letter you authorized Captain Pilkington to turn the Seminole over to Captain Baker; is that right?

A. That is right, sir.

Q. Captain Baker brought her down to Miami?

A. Yes, sir.

Q. What was the occasion for bringing her down to Miami?

A. We had a number of inquiries for the sale of the boat.

Q. Who was it decided to bring her down to Miami?

A. I did, sir.

Q. Before you wrote that letter to Captain Pilkington did you have any discussion with Mr. John S. Phipps about that?

A. I did, with both the stockholders.

Q. And what was the subject of that discussion?

A. To use my own judgment, and see what offer I could get for her.

Q. And who were the stockholders at that time?

A. Mr. John S. and H. C. Phipps.

Q. Who employed Captain Baker to bring her down?

A. I did, sir.

Q. Who arranged the rate of wage?

A. I did.

The Court:

Just before that, go back there; who the stockholders were: Was that the stockholders of the Seminole Boat Company?

Mr. Underwood:

Yes, sir; John S. and H. C. Phipps.

The Court:

John S. and H. C. Phipps.

Mr. Underwood:

Yes, sir; the record shows that at that time each owned half the outstanding shares.

Q. Where was the Seminole placed when she came down to Miami?

A. At the Royal Palm Dock.

Q. Who decided that she should go there rather than some place else?

A. I did, sir.

The Court:

Let me get this straight. Those outstanding certificates, one was in the name of some third party?

Mr. Underwood:

Yes, your Honor; Mrs. Guest. She is a sister of the Messrs. Phipps.

The Court:

Well, has it been brought out,—I just have forgotten; what is the connection, now, between this date when he states that there were only two stockholders, and the time when Mrs. Guest was a stockholder?

Mr. Underwood:

I shall show, your Honor, and the book already shows that in March,—we are now talking about February, bringing the boat down to Miami; in March Mrs. Guest purchased all the stock owned by Mr. H. C. Phipps; so that there have never been more than two stockholders at one time. Prior to March, 1935, half the shares were owned by Mr. J. S. Phipps and half by Mr. H. C. Phipps; and in March, Mr. H. V. sold all his stock to Mrs. Guest. From that time on down to the time of the fire, Mrs. Guest owned half the stock, and Mr. J. S. Phipps owned half the stock. That is what the stock book shows, and I will bring out a little more about that sale.

Q. What did you do with reference to the sale or charter of the boat at that time?

A. We placed a sign on it for sale or charter; and I consulted all of the leading yacht brokers located here, about the sale of her, and asked the opinion as to its value, and suggested they submit the offers that they had for the boat.

Q. Did you arrange to have the boat examined?

A. Yes, sir.

Q. By whom?

A. By Captain Bernard, who is the Lloyd's boat surveyor.

Q. Did you employ him for that purpose?

A. Yes, sir.

Q. Before you did that, did you have any discussion with Mr. J. S. Phipps about that?

A. No, sir.

Q. Who was it that decided to employ a surveyor?

A. I did, sir.

Q. Who was it that decided to employ Bernard, instead of somebody else?

A. I did, sir.

Q. Was anything done about insurance?

A. Yes, sir.

Q. What did you do?

A. I had—that was later on, that was I think in March.

Q. Well, tell us about what you did about insurance.

A. Well, before the boat was taken out on a trip to the Keys, which was the last trip the boat was on, I had the boat insured through Mr. Tom Pruitt.

Q. Who made those arrangements on behalf of the Seminole Boat Company?

A. I did.

Q. Now did you get a report from Mr. Bernard, of his survey?

A. Yes, sir.

Q. Do you recall whether he made any recommendation of work to be done?

Mr. Botts:

Objected to; I think the report is the best evidence.

Mr. Matteson:

I join in the objection.

Mr. Underwood:

I am simply asking him now whether he recalls.

The Court:

You asked him what was the contents, whether he made any recommendations.

Mr. Underwood:

May the question be read?

(The question was read.)

The Court:

I think that is subject to the objection, if there was a written report, which I gathered from what Mr. Hawkins stated that there was a written report. It may be I am wrong.

Mr. Underwood:

I will bring that out, your Honor.

Q. Did you get a written report from Mr. Bernard?

A. Yes, sir.

Q. Will you tell us whether you had any oral report from him prior to the written report?

A. Yes, sir.

Q. What was the nature of that oral report?

Mr. Botts:

Objected to; I think that is hearsay, in the first place, and in the second place, if there was a written report, certainly that is of more value than any. But my main objection is, that a conversation between this witness and that surveyor at that time, is not binding upon my clients.

Mr. Matteson:

I certainly concur in that position, if your Honor please. If this witness who made this examination,



made the observations or recommendations, he is the man to testify to it; his report should speak of it.

The Court:

Not his report, but what he found; if Captain Bernard made any examination and found certain things, he is the one to testify to what he found.

Mr. Underwood:

I have him here under subpoena, your Honor.

The Court:

I think the objection is well taken to this question.

Q. Following the oral report that Captain Bernard made, was any work done on the Seminole?

A. Yes, sir.

Q. And do you remember what that work was?

A. Yes, sir; there was a plate at the point where the propeller shaft went through the hull, that Captain Bernard thought was a little thin.

Mr. Botts:

Wait a minute; don't say what Captain Bernard thought.

The Court:

Do you move to strike what the witness has stated that Captain Bernard thought?

Mr. Botts:

Yes.

The Court:

That motion is granted.

A. We enforced this by using some cement on the inside of the boat.

Q. Was that something that Captain Bernard suggested be done?

Mr. Botts:

Wait a minute; objected to on the ground that is a hearsay statement, asking him if that is something Captain Bearnard thought was necessary. It is objectionable on every ground, nearly, that I can think of. How can he give his thoughts; among other things.

Mr. Underwood:

I didn't ask what Captain Bernard thought; I asked if that was something that Captain Bernard suggested.

Mr. Botts:

You said, what ~~was~~ necessary.

Mr. Underwood:

I don't believe I did, Mr. Botts; I will ask that the question be read.

Mr. Botts:

It is just as objectionable, either way; so let it ride.

The Court:

I think the objection is well taken; I will sustain it.

Q. Mr. Hawkins, I will put it to you this way. How many items did Captain Bernard recommend be done on the Seminole?

Mr. Botts:

I object to that on the ground that it is hearsay; that the recommendations of Captain Bernard have no pro-

bative value whatever in this cause, and are not binding on my client.

Mr. Matteson:

I join in the objection, your Honor.

The Court:

I think the objection is well taken. All I think so far, from what has appeared, that Mr. Hawkins can state, that there was an employment of Captain Bernard, and that there was conversation between them, and the independent fact that some work was done; that is as far as you can go.

Q. Will you tell us, Mr. Hawkins, whether or not you did all the work that Captain Bernard recommended?

Mr. Botts:

Wait a minute; now that is an indirect way of trying to circumvent the Court's ruling, and I object.

The Court:

The objection is well taken.

Mr. Underwood:

I don't see how else I can prove it, your Honor.

Mr. Botts:

You might get the witness that knows.

Mr. Underwood:

If your Honor please, this witness knows what Captain Bernard recommended to him, and this witness knows what work was done.

The Court:

I think he can testify to what work was done.

Mr. Botts:

Exactly; if he will ask him what work was done.

Mr. Underwood:

My purpose is to prove that he did all the work that Captain Bernard recommended; that this was an oral report; and the only way I can prove that is out of the mouth of this witness and Captain Bernard; I can't do it both at the same time.

The Court:

You might have to reintroduce him after you have Captain Bernard's testimony; but on the record now, I think all he can testify to is what was done.

Q. You have testified, Mr. Hawkins, I think, that you got a written report from Captain Bernard?

A. Yes, sir.

Mr. Underwood:

Mr. Botts thinks that is the best evidence.

Mr. Botts:

No, I don't think it is competent evidence, however; and you don't, either.

Mr. Underwood:

You want to keep out both my kinds of evidence?

Mr. Botts:

Right, all that is incompetent.

Q. Mr. Hawkins, I show you a paper; tell me whether or not that is the report you got from Captain Bernard, the written report.

A. Yes, sir, it is.

Q. Are those your initials up there in the upper right hand corner?

A. Yes, sir.

Q. What is the date of that?

Mr. Botts:

Objected to.

Mr. Underwood:

Object to the date of it?

Mr. Botts:

Yes, sir, anything that is in that document there, unless it is in evidence; yes, sir.

Q. About when did you get it, Mr. Hawkins?

A. March 29th.

The Court:

Let me rule on the other; I overrule the objection as to the date.

A. 1935.

Mr. Underwood:

I ask that that be marked for identification.

(The said report was marked Respondents' Exhibit DD for identification.)

Mr. Underwood:

Now, if your Honor please, I offer in evidence, Respondent's Exhibit DD for identification, which the wit-



ness indicates is the report made to him by Captain Bernard.

Mr. Botts:

To the introduction of which the Respondents Pilkington objects, on the ground that it is hearsay, that it is not the best evidence; that the only proper method of proving those is to bring in the witnesses who made it, and prove it as direct testimony; and that you are not permitted to avoid the calling of a witness by trying to put in his written reports, not testified to under oath nor in any other manner made competent evidence.

Mr. Matteson:

I certainly join in all of the objections, if your Honor please. It is quite incompetent to introduce the written report of a man who is not called as a witness, for any purpose at all.

The Court:

Well, so far as the document showeth the necessity of any repairs, it is inadmissible. So far as it is showing an independent fact, that a written report was made by an employed marine surveyor, it is competent—that independent fact, that a written report was made.

Mr. Botts:

We will stipulate, because we don't think that document ought to go in the record, unless the witness is here so that we can cross examine him, which seems to be the purpose of trying to get it in this way to avoid letting us cross examine this witness: If the sole purpose of it is to establish the fact that there was a written report, on behalf of the Respondent Pilkington, we stipulate that there was a written report; and, that fact admitted, there is no reason for encumbering the record with a document otherwise inadmissible.

The Court:

There is no jury in this case. I don't see any objection to it being admitted for the purpose that I have expressed.

Mr. Botts:

I want you men personally in here, to cross examine him.

Mr. Underwood:

Mr. Matteson had him under subpoena and didn't call him.

The Court:

I will overrule the objection, and admit it under the circumstances that I have pleaded.

Mr. Botts:

For that purpose only?

The Court:

Yes, sir. I have instructed that.

(The paper marked Respondents Exhibit Dd for identification, thereupon was admitted in evidence and filed as Respondents' Exhibit DD.)

Q. Did Captain Bernard place a value on the Seminole?

Mr. Botts:

Objected to as immaterial and hearsay.—If the Court please, I will withdraw the objection to the answer. He can answer it yes or no.

Mr. Underwood:

That is all I want.

A. Yes.

Q. Do you know whether or not she was insured at that value when you insured her?

Mr. Botts:

Now, objected to; that is an indirect method of trying to get in testimony that counsel knows is incompetent. Then the next question will be, what was she insured at; and they try to get in indirectly, testimony that he knows in incompetent; and I object to it.

The Court:

I think the objection is well taken. He can say what she was insured at, and build it up to other evidence.

Mr. Underwood:

Your Honor says that I can ask him what she was insured for?

The Court:

Yes, sir.

Q. Do you remember what figure she was insured for?

Mr. Botts:

Objected to, on the ground that the insurance policy is the best evidence.

Mr. Matteson:

I object on the further ground it is immaterial, irrelevant and incompetent.

The Court:

I don't see the materiality, but I will leave that open to be stricken if it doesn't appear. I will admit it subject to the materiality being shown.

Mr. Botts:

Don't you think the insurance policy is the best evidence?

The Court:

I don't think so. Technically and strictly it is, but we are not trying an insurance case, we are trying another case.

A. She was insured.

Q. And I think you are permitted to say at what figure she was insured.

A. \$8,500, if I remember correctly.

Q. And do you remember whether or not that was the figure at which Mr. Bernard repored her value?

Mr. Botts:

I object.

Mr. Underwood:

Or am I asking the same question?

The Court:

Yes, sir.

Mr. Underwood:

I will withdraw it.

Q. Now, Mr. Hawkins, did you get any offers for the Seminole?

Mr. Botts:

Objected to as immaterial.

Mr. Underwood:

If your Honor please, may I deliver myself of a very brief statement here?—These gentlemen have said more

than once they wanted the whole picture. Here I am trying to give them the whole picture; and while I concede that whether or not he got an offer for the Seminole, strictly speaking is immaterial to the issues in this case. It is a proper part of the background leading up to the sale of Mr. H. C. Phipps' stock to Mrs. Guest; and it is the basis for what subsequently transpired. That is what I propose to prove. I think your Honor could understand what transpired here, and the nature of the entire arrangement, if we can put in some details, rather than to have simply the naked transaction of a sale of stocks by Mr. H. C. Phipps to Mrs. Guest.

Mr. Botts:

I insist on the objection.

The Court:

I shall overrule the objection.

(The question was read.)

A. Yes, sir.

Q. And did you get one offer that you thought was the best you could get?

A. Yes, sir; \$5,000.

Mr. Underwood:

In deference to Mr. Botts I wasn't going to ask him the amount of that offer.

Mr. Botts:

I move to strike that part as being immaterial and not responsive to the question also,—the amount of that offer.



The Court:

I don't see the materiality of that. It certainly is subject to the technical objection it is not responsive. I shall grant the motion. I don't see the materiality of it. If it is made to appear that it is material, why you may offer it again.

Mr. Underwood:

May I put it this way, your Honor:

Mr. Botts:

Go ahead. We will withdraw the objection to that; let it stay in.

Q. What was the amount of the offer, Mr. Hawkins?

A. \$5,000.

Q. What did you do with reference to that offer when you received it?

A. Submitted it to both the stockholders.

Q. And what was the reaction of Mr. H. C. Phipps, as expressed to you?

Mr. Botts:

Objected to. That is certainly incompetent, if the Court please, and hearsay; it calls for a conclusion as well.

Mr. Underwood:

If your Honor please, the issue in this case is whether Mr. J. S. Phipps operated and controlled the Seminole. That is the allegation against us. I am endeavoring to show that he did not; that one stockholder took just as much interest and had just as much activity in the Seminole Corporation, as the other; and this was a real live corporation, and behaved itself. The only way I can do that is by proving instances where each stockholder did

something; That is what I propose to do. I want to show that there was a course of dealing in the history of this corporation; certain things were submitted to the stockholders; and that both stockholders on occasion acted as such, and that one, no more than the other, did so. The only way I can do it is by proving an act. This is a verbal act, it isn't hearsay, when Mr. H. C. Phipps said, either I will or I won't sell at that figures, that is an act; it is an act expressed in words, it is true, but it is an act, nevertheless.

Mr. Matteson:

That isn't exactly what you asked.

The Court:

The question asked him was what his reaction was to it, and incorporates the idea of reasons.

Mr. Underwood:

"As expressed to you", was in my question.

The Court:

I think he could answer the question as to whether this stockholder did or did not give a formal answer to the communication from Mr. Hawkins.

Mr. Botts:

But that wasn't the question.

The Court:

Well, I will construe the answer that way; limit it to that phase,—to that question. You may answer the question with that correction.

A. He told me to sell it—talking about Mr. H. C. Phipps.

Q. Yes.

A. He told me to sell it.

Q. And did you communicate the offer to Mr. J. S. Phipps?

A. Yes, sir.

Q. What did he tell you?

A. He said he was undecided, he would let me know.

Q. And did he let you know later on?

A. Yes, sir.

Q. When did he let you know?

A. He told me that arrangements had been made for his sister, Mrs. Guest, to buy Mr. H. C. Phipps' interest.

Mr. Botts:

If the Court please I think that is bringing in testimony that should properly come from these witnesses themselves. Now they are saying what Mr. H. C. Phipps and what Mr. John S. Phipps said. Now then I think we are entitled to get that testimony, if at all, from the principal, and not by hearsay through the agent; and that that testimony should be stricken out. If they want to bring in what they did or said, let them bring Mr. John S. Phipps and Mr. H. C. Phipps here, so that we can cross examine them and find out the whys and wherefores. They say they went to get the picture; well, we would like to get the picture, from the direct source. I think that testimony is clearly objectionable on the ground that it is hearsay; and that we are entitled to have the witness Phipps here and let him state what the facts are.

The Court:

I certainly think, Mr. Underwood, that the answer of Mr. H. C. Phipps—I believe it is H. C.

A. H. C.

The Court:

As to what he wanted,—he was the one uncertain?

Mr. Botts:

That was J. S.

A. That was J. S.

The Court:

His being uncertain, because of a proposed sale or relationship to another purchaser of stock,—I think that is clearly incompetent.

Mr. Underwood:

If your Honor please, what I want to prove by this, is simply this: That Mr. Hawkins as secretary of this company, was directed to decline selling the boat on a specific offer, after the stockholders had met together and reached a decision as to the sale of the stock, from one stockholder, a member of the family, to another member of the family.

The Court:

No, I think that will have to come out from those witnesses themselves. I think all Mr. Hawkins can testify to about that, is that he as an officer, obtained an offer, and that he communicated that offer to the stockholders, and what their reply was. I don't think he can go any farther than that.

Q. Well, you didn't indicate the offer to Mr. J. S. Phipps?

A. Yes, sir.

Q. You got a reply from him?

A. Yes, sir.

Q. And what action did you then take following that reply on the offer to purchase the boat?

A. I refused the offer.

Q. And do you remember when that was?

A. Well, I have a record of it; it was in March, I think, 1935.

Q. And how long after you received that communication from Mr. J. S. Phipps and declined the offer to buy the boat, was the stock certificate to Mrs. Guest issued?

A. About a week.

Q. That stock certificate bears date of March 23, 1935?

A. Yes, sir.

Q. That was about a week after you were instructed by Mr. J. S. Phipps to decline the offer?

A. Yes, sir.

Q. Now there was a cruise made by the Seminole in the Spring of 1935, was there not?

A. Yes, sir.

Q. And were you on that cruise?

A. Part of the time, yes, sir.

Q. How many boats were along?

A. Two large boats.

Q. What were they?

A. Captain Starke, the Norma and the Seminole.

Q. You had some fishing boats besides?

A. We had four or five fishing boats.

Q. Do you remember what boats they were?

A. Yes, sir; the Clip, a fishing boat owned by Mr. John S. Phipps; and a little Prigg boat owned by the Seminole Company, a little runabout; and then Captain Starke of course had his own boat,—three or four boats.

Q. He had the Norma and fishing boats?

A. Yes, sir.

Q. What persons were on that cruise?

A. Well, on the beginning of the trip, on the Norma, Mr. Howard Phipps, Mr. H. C. Phipps, Mr. David T. Lehman, Jr., and myself. On the Seminole was Mr. and



Mrs. John S. Phipps, Miss Audrey Phipps, Mrs. Guest and her son Raymond.

Q. Who was master of the Seminole on that trip?

A. Captain W. P. Baker.

Q. Who employed him?

A. I did, sir.

Q. Who made the arrangements with him?

A. I did.

Q. Did you have any communication with him by telegraph?

A. Yes, sir.

Q. I show you a paper; will you tell me what that is?

A. That is a copy of the telegram to Captain Baker.

Q. What date did you send that?

A. March 27, 1935.

Q. Did you get a reply to that?

A. Yes, sir.

Q. I show you another paper; tell me what that is.

A. It is a reply from Captain Baker.

Q. What is the date of that?

A. March 25.

Q. Did you send him a wire after that?

A. Yes, sir.

Q. I show you still another paper; what is the date of that?

A. It is my wire to Captain Baker, dated March 28, 1935, confirming his telegram.

Mr. Underwood:

I ask that these be marked Respondent's Exhibits EE, 1, 2 and 3.

(The said three telegrams were marked Respondents' Exhibits EE-1, EE-2 and EE-3, respectively, for identification.)

Mr. Underwood:

I offer these in evidence.

Mr. Botts:

No objection.

The Court:

They will be admitted.

(Defendants' Exhibits EE-1, EE-2, and EE-3 for identification, thereupon were admitted in evidence and marked with the said respective numbers.)

Q. Did Captain Baker bring some part of the crew with him?

A. Yes, sir.

Q. Who was it decided that that was to be done?

A. Captain Baker and myself.

Q. Where did the engineer come from?

A. Palm Beach.

Q. You had nothing to do with the providing of the engineer?

A. No, sir.

Q. Did you know R. C. Abel?

A. Yes, sir.

Q. Was he on that cruise?

A. Yes, sir.

Q. And in charge of some boat?

A. In charge of the Clip,—the fishing boat.

Q. Did he have anything to do with the Seminole on that trip?

A. No, sir.

Q. Where did the party leave the Seminole after that trip?

A. At Matecumbe, trestle #2.

Q. Were any instructions given by you to anybody as to what to do with the Seminole from that time on?

Mr. Botts:

I think that is objectionable, if the Court please; it is hearsay. I mean, it is transactions between this man and some one else, but I can't see how they are binding upon us, *res inter alios acta*.

Mr. Underwood:

If your Honor please, it is a matter of instructions given by an officer of the owning corporation, owner of the boat. These are acts, consummated in words, but they are acts,—

The Court:

I think that is competent; overrule the objection.

A. Yes, sir.

Q. And what instructions did you give, and to whom?

A. Gave them to Captain Baker, and told him to take the boat to the Royal Palm Dock here, unload the surplus supplies, and take the boat to Captain Pilkington's boatyard at Ft. Lauderdale for storage.

Q. Did anybody tell you to issue those instructions?

A. No, sir.

Q. Did Mr. J. S. Phipps tell you to do anything about that?

A. No, sir.

Q. Did you give any instructions to the engineer?

A. No, sir.

Q. When did you next see Captain Baker?

A. Well, it was the day after he placed the boat in storage, or the afternoon of the day; I don't know which.

Q. Where did you see him?

A. At my office.

Q. Did he give you anything?

A. He gave me the keys to the boat.

Q. Describe those keys as well as you can for us Mr. Hawkins.

A. As I remember them, they were on a string, or regular key ring, with either a metal or a paper tag, denoting what they were. There were a number of keys.

Q. Do you know how many, about?

A. Oh, I wouldn't know; a group of them.

Q. What did you do with those keys?

A. I gave them to the cashier, to keep them.

Q. Did you do anything with them after that?

A. Yes, sir.

Q. What did you do with them?

A. The next day I gave them to Mr. Webber in my office.

Q. How many of the keys that you received from Captain Baker, did you give to Mr. Webber?

A. All of them.

Q. I show you a letter dated April 17, 1935, which has previously been marked Libelants' Exhibit 52. Did you write that letter?

A. Yes, sir.

Q. On April 17, 1935?

A. Yes, sir.

Q. Is that the letter you gave to Mr. Webber?

A. Yes, sir.

Q. Do you know whether Mr. Webber went to the Seminole at Captain Pilkington's yard?

A. Yes, sir.

Q. Do you know whether he brought anything back?

A. He did.

Q. Did you see what he brought back?

A. Yes, sir.

Q. Describe it to us.

A. Well, there was quite a large number of bundles of linen, silver, trophies off of the boat; must have been eight or ten bundles or more.

Q. And where were they put?

A. We built a special cedar chest for them in the office; placed them in that.

Q. Now did you have any conversation with Mr. Webber after he came back, with reference to the keys? Just answer yes or no.

A. Yes.

Q. And did you issue Mr. Webber any instructions about the keys?

A. Yes, sir.

Q. What instructions did you issue to him?

A. I told him to send them to Captain Pilkington.

Q. From that time on did you have any communication from Captain Pilkington, either orally or in writing, down to the time of the fire?

A. No, sir.

Q. Did Captain Pilkington ever make any request of you for any additional keys?

A. No, sir.

Q. Did he ever make any request of anybody else, to your knowledge, for any additional keys?

A. No, sir.

Q. When did you first learn about the fire, Mr. Hawkins?

A. It was the date of the fire, I think around one-thirty.

Q. What did you do?

A. I drove to the fire, accompanied by Mr. Webber, to Pilkington's boatyard.

Q. Did you see the Seminole then?

A. Yes, sir.

Q. Do you remember what time of day you got there?

A. I think it was around three o'clock; three-thirty or three; about an hour after the fire started.



Q. Was she still burning?

A. Yes, sir.

Q. Was she sunk yet?

A. No, sir.

Q. Did you see Captain Pilkington?

A. Yes, sir.

Q. Did you have a conversation with him?

A. Yes, sir.

Q. Where did it take place?

A. In his little office, or house; little frame building.

Q. Tell me the substance of that conversation.

Mr. Matteson:

If your Honor please, as far as the Libelants are concerned, we take it that this question is only being offered as discrediting Pilkington's testimony, not for the purpose of showing the conversation that was binding on the libelants in any way.

Mr. Underwood:

No; as I did before, your Honor, I offer this to prove these facts as Captain Pilkington stated these to be. You remember your Honor received that testimony from Captain Cody and from Mr. Webber.

The Court:

As against Pilkington?

Mr. Underwood:

As against both.

Mr. Matteson:

No, I think it was in the matter I suggested, as against Pilkington, as an admission, and as against the libelants only for the purpose of contradicting or discrediting Pilkington's testimony.

Mr. Underwood:

If your Honor please, at the proper time I shall be prepared to show you authorities which will indicate, I am sure to your satisfaction, that I am entitled to prove the fact that there was no gasoline in the boat, on the basis of Captain Pilkington's statement; and that is admissible against both the libelants and Captain Pilkington, and I offer it for that purpose. When Captain Cody testified and when Mr. Webber testified, I asked them both,—put the same question twice, once in a general way, to prove the facts, and once in a specific way to discredit Captain Pilkington; I want to get this on the record for that purpose.

Mr. Matteson:

On what theory would it be admissible against the libelants as proof of the fact?

Mr. Underwood:

Admission against interest, made at the time, voluntarily, and therefore proof of the fact.

Mr. Matteson:

Certainly not an admission on the part of anyone authorized to make them by libelants.

Mr. Underwood:

It doesn't have to be. An admission as against interest is admissible if made voluntarily, to prove the fact.

Mr. Botts:

If the Court please, it is such an astounding proposition of law to me, that they can attempt to establish a fact by such testimony, that I would like to see that authority. So far as it being a conversation between Captain Pilkington and this witness, I think as against Cap-

tain Pilkington it is probably admissible, but to attempt to establish a fact,—if counsel can produce authority for that I would like to see it, because I have never heard of it.

The Court:

Let us defer that until the final hearing. The testimony is going on, and as to how far it will be considered, if it is against him why we will unravel that later. You can make your objection though, for the purpose of the record.

Mr. Matteson:

Yes, I make my objection.

Mr. Botts:

If your—if this is intended to impeach Captain Pilkington, why then naturally it is not the proper way to put the question. So if it is intended to impeach Captain Pilkington, then I will object to the question in that it is not the proper form.

The Court:

You admit that so far as an admission, if there is anything of admission that comes in by this answer, it will be binding on Captain Pilkington?

Mr. Botts:

It might be, yes, sir; and I think it would be admissible; but if it is an attempt to impeach him, it is clearly not the proper method.

The Court:

Well, I won't ask Mr. Underwood that question; I will let him be governed by that.

Mr. Underwood:

If your Honor please, I intended to ask the question both ways. I can't lead him for the general purpose; I have to lead him for the impeachment purpose. I have to fire one barrel at a time, and this is not the impeachment barrel.

The Court:

You want to put in your objection?

Mr. Matteson:

I object to it generally, yes, sir.

Q. All right, Mr. Hawkins, I think you can go ahead now and tell us the conversation with Captain Pilkington.

A. Why naturally I was interested in the cause of the fire; I asked the Captain how it started. He said that he couldn't understand it; that shortly before, within the month, he had tried to run the generator in the engine room on the boat, and couldn't do so for the lack of gasoline.

Q. Now I have got to ask you that question in another way, Mr. Hawkins:

Mr. Underwood:

Mr. Botts, this is the impeachment barrel.

Mr. Botts:

All right, fire.

Q. Tell us whether or not, Mr. Hawkins, it is a fact that, on the afternoon of the fire, in or about Captain Pilkington's house, and in the presence of yourself and some others, Captain Pilkington said in substance, "I cannot account for the fire; I know there was no gaso-

line in the boat, because I had been in her engine room and attempted to run the generator, within the month, but could not do so for lack of gasoline."

A. That is right; that is substantially correct.

Q. Do you remember what time you left the boatyard that day?

A. About four o'clock.

Q. Do you remember whether the fire was still burning?

A. Yes, sir, it was.

Q. And was the Seminole sunk as yet?

A. No, sir.

Q. Side was still above water?

A. Yes, sir.

Q. Did you ever make any arrangement with Captain Pilkington about the terms of storage of the Seminole?

A. No, sir.

Q. Now, following the fire did you communicate with Captain Bernard, of whom we have spoken before?

A. Yes, sir.

Q. Will you tell us the substance of your conversation with Captain Bernard?

Mr. Botts:

Objected to.

Mr. Matteson:

We object.

Mr. Underwood:

The purpose of this is to prove that Captain Bernard, your Honor, was an unfriendly witness, so that when I call him I will contend that he is an unfriendly witness; a witness I have never spoken to except in the corridor of the Courtroom. I want to lay this as the foundation to prove that he is an unfriendly witness, so that I can-



not be restrained from cross examining him, and will not be bound necessarily by what he says when I call him. —It is the Thomas situation.

Mr. Matteson:

If your Honor please, it seems to me it is sort of premature to bring in at this time. Certainly it wouldn't be admissible for any other purpose, and I certainly have no reason to believe the man is hostile to any side in this case. I think there is no reason for it at all.

Mr. Botts:

If the Court please, if they want to prove that a witness is unfriendly, and if they should for that purpose bring in witnesses by whom it might be shown that he has made statements directly showing that he was hostile, I think at the proper time that might be proper. But I strongly suspect that in this sense they are trying to indirectly get something before the Court that may be conceived to have probative value of other kinds. Now if the Court will limit the answer to statements that the witness might have made as to hostility, I won't object. But if they drag it in in this way, some statement that the witness is supposed to have made with reference to the condition of the Seminole, then the obvious purpose is not to show hostility, but to try to prove indirectly questions. Now I think that at this time proof of a conversation between this witness and Captain Bernard or Mr. Bernard, is inadmissible as hearsay, and not binding on any of these parties, and I object to it specifically on that ground, which I believe is clearly well taken. But I want to make this statement, that I will not object, even though it is technically inadmissible, to testimony put in solely for the purpose of proving hostility, if that is the purpose, and without any indirect possibility of its being twisted to have a probative value on other issues in the case.

Mr. Matteson:

I think that is a very fair statement of it, if your Honor please; and if it is with the understanding that it is definitely limited to such statements, and reserving our right to move to strike it in the event it isn't so limited, I haven't any objection to the showing of the bias that exists; I can't conceive that it does.

Mr. Dyer:

It seems to me the only possible way the Court could rule that that evidence is now admissible, is to accept as a fact, and evidence, Mr. Underwood's statement that the witness is hostile; because there is nothing in the record to show his hostility, except Mr. Underwood's statement.

Mr. Underwood:

That is what I am trying to prove.

Mr. Dyer:

If you put him on the stand and show he is hostile, that may be so, \* \* \*

Mr. Botts:

I think it is a very dangerous precedent to set; I don't think it should be permitted.

Mr. Underwood:

All I want to prove is the statement made by Mr. Bernard as to his hostility.

Mr. Matteson:

It seems to me the time to do this will be after Mr. Bernard is on the stand and testifies and shows that he is a hostile witness, by his attitude or his manner or his answers. It doesn't seem to me that it is proper at this

time to introduce statements by this witness, in advance of that. That is a thing that is to be determined by the attitude of the witness when he comes, and it isn't fair to bring in testimony of this kind in advance of that time.

Mr. Underwood:

Hostility isn't by any means always apparent from the demeanor of the witness, or his answers. I want to prove a statement made by Mr. Bernard, that I shall say indicates his hostility.

Mr. Botts:

Does it have to do with the condition of the Seminole?

Mr. Underwood:

Nothing whatever with the condition of the Seminole.

Mr. Botts:

I have made my position clear on that.

Mr. Underwood:

Your suspicions do me injustice.

Mr. Botts:

Your previous questions warrant some suspicion.

The Court:

Suppose we let the witness answer and then I will determine this question.

A. Yes, sir, I tried,—I called Captain Bernard and asked if it would be convenient for him to go to the fire, to try to determine the cause of it. He said he would be glad to do that, but he couldn't represent us, be-

cause it was most embarrassing to him because he represented a number of the insurance companies.

The Court:

When was that conversation?

A. I had two conversations; this was a day or two after the fire, and then later on I had another talk with him. I have used Captain Bernard all the time on boats that I have been connected with.

Mr. Matteson:

That certainly is no evidence of any bias. If I should refuse to accept employment for a client, because I don't want to represent him as against somebody else—

The Court:

Let us deal with that when he is brought in. I don't think the record is hurt by letting this go in at the present time so I will overrule the objection to his answering as he has, and considering that you have made a motion to strike.

Mr. Botts:

No, sir, I am not making a motion; I am satisfied with it just as it is, but I wanted to protect myself.

Q. Mr. Hawkins, I show you a paper and ask you if you can tell me what that is.

A. Yes, sir. It is a copy of a letter dated May 30, 1932, addressed to the Pilkington Yacht and Storage Basin.

Q. To whom did you deliver the original of this letter and—

A. To Mr. Frank Thill.

Mr. Underwood:

I ask that that be marked for identification.

(Said paper was marked Respondents' Exhibit FF for identification.)

Mr. Underwood:

I show that to Mr. Botts and ask him to produce the original if he can. I didn't have this letter before.

Mr. Botts:

I will say to Mr. Underwood that we have produced everything we can find and I think I am correct in saying that this has not been produced; if so, we cannot produce it because we produced everything we have; and we have made a most careful search after that other request.

The Court:

Do you offer that now as secondary evidence?

Mr. Underwood:

I can't prove that he got it, because Mr. Hawkins just delivered it to Mr. Thill, didn't even put it in the mail; it is something that was delivered by hand to a person who is supposed—I won't say what he said, my friends would probably rise and object.

The Court:

What is it?

Mr. Botts:

I don't know. I don't know whether it ever reached Captain Pilkington or not.

The Court:

There is no evidence that Mr. Frank Thill did contact the addressee of this letter at all?



Mr. Underwood:

I have no such evidence as yet, if the Court please.

Mr. Botts:

The position of Captain Pilkington is this; that we have no letter, and we neither affirm nor deny,—we have no recollection of it; so we can't say that it was or was not.

The Court:

Well it isn't offered in evidence anyway; you just offer it for identification?

Mr. Underwood:

That is all.

Q. Now, Mr. Hawkins, you have said that the Boulevard Mortgage Company made some payments on account of the Seminole and advances to the Seminole Boat Company; is that correct?

A. Yes, sir.

Q. Now have you prepared a list of other corporations and persons for whose accounts the Boulevard Mortgage Company made advances?

A. Yes, sir.

Q. And whose bills the Boulevard Mortgage Company paid?

A. Yes, sir.

Q. Is that the list?

A. Yes, sir.

Q. Rather than offer the list, may I just have the reporter put these names in the record, without Mr. Hawkins reading them?—I will ask the question; Mr. Hawkins, will you tell me what corporations and persons those are?

Mr. Botts:

Just a minute.

Mr. Matteson:

Listen. Let's see if I understand this correctly. This is supposed to be a list of persons for whom the Boulevard Mortgage Company advanced moneys from time to time?

Mr. Underwood:

Correct.

Mr. Matteson:

In other words it is supposed to be an abstract of what the books of the Boulevard Mortgage Company will show; is that right?

Mr. Underwood:

No. By no means an abstract of the book.

Mr. Botts:

So far as Respondent Pilkington is concerned, you can file the list or read it, either one. Maybe it would be better to file it then we could have it there where we could look at it, if you don't mind.

Mr. Underwood:

I will give you a copy of it.

Mr. Botts:

All right.

Mr. Underwood:

I am not offering the top two lines, because we don't like that phrase; it is to be conceded that that is not part of this thing. With that understanding we will just

let the reporter copy this in the record as though Mr. Hawkins had read it off in his answer; is that understood?

Mr. Botts:

Yes.

The Court:

How does that supplement the question and answer now? I just don't understand it.

Mr. Underwood:

Well, if your Honor please I have asked Mr. Hawkins to give us the names of a number of companies for whom the Boulevard Mortgage Company made payments and made advances of money from time to time. My purpose is to show that the Boulevard Mortgage Company made advances for a number of other companies, in the same way that it did the Seminole. The contention on the other side, will be, as I understand it, that the Boulevard Mortgage Company and the Palm Beach Company made advances for the Seminole, because Mr. John S. Phipps dominated the Boulevard Mortgage Company and dominated the Seminole Boat Company. My purpose is to show that he didn't dominate either of them; that this corporation and the Palm Beach Company did the same thing for a number of other corporations.

The Court:

Well, you have shown so far I believe, that the Boulevard Mortgage Company paid bills properly chargeable to the Seminole Boat Company.

Mr. Underwood:

That is correct.

The Court:

And the purpose of this is to show that the Boulevard Mortgage Company likewise made payments for these various—have listed corporations.

Mr. Underwood:

That is true, and individuals; did the same thing for some twenty others.

The Court:

Well, was the Boulevard Mortgage Company reimbursed for these amounts?

Mr. Underwood:

I shall prove that.

The Court:

So, far as the Seminole Boat Company is concerned, any payments that were made by the Boulevard Mortgage Company, has it so far been proven whether the Boulevard Mortgage Company was reimbursed for the payment made for the account of the Seminole Boat Company?

Mr. Underwood:

I believe I asked Mr. Hawkins that, but I will ask him that now:

Q. Do you know, Mr. Hawkins, whether the Boulevard Mortgage Company has been reimbursed for the payment it made on behalf of the Seminole Boat Company?

A. Well, those records were kept in the New York office and I wouldn't know.

The Court:

The purpose of this, to go back, is to show that the Boulevard Mortgage Company made payments for these listed corporations.

Mr. Underwood:

That is correct.

The Court:

Or, individuals.

Mr. Underwood:

That is right.

The Court:

Is there any objection to the list being copied now by the reporter?

Mr. Botts:

None.

A. Bessemer Investment Co.; Bessemer Trust Co.; Biscayne Boulevard, Inc.; Duval Mortgage and Security Co.; East Shore Co.; Exchange Trading Corporation; Miami Plaza, Inc.; New Miami Shores Corporation; Palm Beach Co.; Phipps Realty Co.; Regent Land Co.; Seminole Boat Co.; Suburban Miami Investment Corporation; The Blackhawk Co.; The Mayaca Corporation; Boulevard Amusement Co.; Estate of Mrs. Bradley Martin; Frederick E. Guest; Mrs. Amy Guest; Bradley Martin; Henry C. Phipps; Howard Phipps; Mrs. John S. Phipps; John S. Phipps, M. G. Chace; Miami Corporation.

Q. Did the Boulevard Mortgage Company make any charge to any of these persons for that service?

A. No, sir.



Q. Mr. Hawkins, do you recall whether the Seminole Boat Company paid a personal property tax in the early part of 1935?

A. Yes, sir.

Q. I show you a voucher check and a check in support; will you tell me whether or not you recognize these?

A. Yes, sir.

Q. Does that bear your initials,—the voucher?

A. Yes, sir.

Q. Is the check there, your signature?

A. No, sir; signed by Mr. Clark, but I approved it.

Q. Payment was made by what company?

A. Seminole Boat Company.

Q. The payment was made by what company?

A. The Boulevard Mortgage Company.

Q. To whom was it charged?

A. Seminole Boat Company.

Q. Who decided that that property tax should be paid, at that time?

A. I did.

Mr. Underwood:

I offer these in evidence.

The Court:

Mr. Hawkins, as I understand now, when it came time, according to your directions, for this item to be paid, the Seminole Boat Company didn't have any funds to pay that?

A. That is right, sir.

The Court:

Is that correct?

A. That is right.

The Court:

And the Boulevard Mortgage Company did have the funds in the bank and could pay it?

A. That is right.

The Court:

So at the request of the Seminole Boat Company, the Boulevard Mortgage Company made actual payment of this account?

A. That is right.

The Court:

Now then was that exact amount, as a separate item, or as a part of a total, repaid to the Boulevard Mortgage Company?

A. Well, Judge, in our office we billed it through our head official and then periodically the accounts were all settled. Now I can't testify that I personally know that the account was reimbursed, but the books will reflect that.

The Court:

Well, who did you bill it to?

A. We sent it to the New York office, this disbursement, a copy of that voucher, together with the charge.

The Court:

Can you enlighten the Court as to who the New York office would bill it to?

A. To the stockholders of the Seminole Boat Company.

The Court:

As to whether it was actually paid by the stockholders of the Seminole Boat Company, and that the Boulevard Mortgage Company was reimbursed for that, you don't know that?

A. Well, the books would show that. The books were balanced as of January 1st, 1935, when the stock was transferred.

Q. Can you positively enlighten me on this, though, that that bill was not suffered as a depletion of the assets of the Boulevard Mortgage Company?

A. That is right, it was not.

The Court:

The stockholders of the Boulevard Mortgage Company didn't lose that amount of that bill?

A. No, sir.

The Court:

And according to the method of paying bills, the Boulevard Mortgage Company was just an intermediary or exchange?

A. It was for many people, including myself.

Mr. Underwood:

In due time I think I can show your Honor the original check by which this and a number of other items were paid back.

Mr. Boits:

No objection from Pilkington.

The Court:

Let it be admitted.

(The last paper offered was admitted in evidence and marked Respondents' Exhibit GG.)

Q. Mr. Hawkins, in February 1935, did you make a payment to the Boulevard Mortgage Company, to make a payment to Captain Abel for certain expenses?

A. Yes, sir.

Q. How much?

A. Captain Abel got twenty dollars I guess; this check is for \$22.70.

Q. And against whom was the twenty dollars charged on the books of the Boulevard Mortgage Company when that check was drawn?

A. Seminole Boat Company.

Mr. Underwood:

I offer that in evidence.

The Court:

So on the books of the Boulevard Mortgage Company, the debit was set up as against the Seminole Boat Company which had requested this be done?

A. That is right, sir.

The Court:

In other words it wasn't set up on the books of the Boulevard Mortgage Company as a debit against the stockholders of the Seminole Boat Company?

A. No, it is against the company.

Mr. Botts:

No objection.

(The said check or voucher was admitted in evidence and marked Respondents' Exhibit HH.)

Mr. Botts:

Have you very many items like this?

Mr. Underwood:

Quite a number.

Mr. Botts:

What I was going to suggest, why don't you just let them be marked subject to the arrangement we had with the others; that if any of these we conceive later to be subject to objection, we will move individually to strike them; and we can perhaps make progress that way, as you did with the books of the Seminole Boat Company. You have no objection to that?

Mr. Matteson:

That sounds reasonable to me.

Mr. Underwood:

Does your Honor approve of that suggestion?

The Court:

Well, I do, and yet I am gaining information about this matter as we go along, and to just put it all in there, you all may understand it and I may not. I want to save time too, but I am getting information about this as we go along.

Mr. Botts:

Well, let the Court examine them and ask any questions as they go along, but I am not going to examine them; and we will save time by us not examining them and putting in any objections if we have any, and then later we will come back if we feel like it.

The Court:

It is just the nature of the bill, what was the nature of the charge, that I am interested in?



Mr. Underwood:

My principal purpose in all these things, your Honor, is to show who it was that determined to spend this money in this particular way. I am endeavoring to show that Mr. Hawkins operated and controlled the Seminole when she was at Miami, and not Mr. John S. Phipps and all those people. It was he who made the decision and not Mr. John S. Phipps. That is the purpose of all this.

Q. Now who was it determined to pay Abel at that time, that amount?

A. I did.

The Court:

Now that is offered, and no objection?

Mr. Underwood:

Yes; that is marked HH.

The Court:

I will admit all of them. You are calling my attention to the material facts you want to call to the Court's attention?

Mr. Underwood:

Yes, sir.

The Court:

But the ruling will be, they will be admitted, subject to any motion to strike.

Q. Now Mr. Hawkins, in March did you pay Captain Baker \$78.25?—when I say you, I mean the Boulevard Mortgage Company.

A. Yes, sir.

Q. And against whom was that charged?

A. Seminole Boat Company.

Q. And what was the nature of the charge?

A. It was for various employes on the boat, and one minor repair.

Q. What was the nature of that repair?

A. Welding a head,—I presume a cylinder head.

Q. Who determined upon that?

A. I did.

Q. Did you have any conversation with Mr. J. S. Phipps before doing that?

A. No, sir.

Mr. Underwood:

I offer these.

(The said check-voucher, so offered, was admitted in evidence and marked Respondents' Exhibit II.)

Q. Also in March, Mr. Hawkins, did the Boulevard Mortgage Company make a payment to one Weinkle's, Incorporated?

A. Yes, sir.

Q. Against whom was it charged?

A. Seminole Company.

Q. What was the nature of the service or the material?

A. That is from a food store, so it was either—probably food.

Q. Did you approve of the purchase of that?

A. Yes, sir.

Mr. Underwood:

I offer that.

(The said check-voucher, was admitted in evidence and marked Respondents' Exhibit JJ.)

Q. Mr. Hawkins, in March, did you also,—did the Boulevard Mortgage Company make a payment to the Miami Radio Service Company?

A. Yes, sir.

Q. To whom was it charged?

A. Seminole Boat Company.

Q. What was the nature of the work?

A. Repairing a radio.

Q. Who determined that that should be done?

A. I did.

Q. Did you have any conversation with Mr. John S. Phipps before you did that?

A. No, sir.

Mr. Underwood:

I offer that, the voucher and check in support.

(The said check-voucher, was admitted in evidence and marked Respondents' Exhibit KK.)

Q. On March 1, 1935, did Boulevard Mortgage Company make a payment to the Bay Supply Company?

A. Yes, sir.

Q. And to whom was it charged?

A. Seminole Boat Company.

Q. What was the amount?

A. \$110.80.

Q. What was it for?

A. Gasoline and kerosene.

Q. Who approved the purchase?

A. Captain Baker and myself.

Q. Anybody else?

A. No, sir.

Mr. Underwood:

I offer the check and the voucher.

(Said check and voucher were admitted in evidence and marked Respondents' Exhibit LL.)

Q. Mr. Hawkins, I show you a voucher and check No. 299 of the Boulevard Mortgage Company, which is made payable to C. H. Kelly, cashier; who was he?

A. He is the cashier in charge of all the rental collections in the office and the paying of petit bills.

Q. What was the routine for reimbursing him when he made expenditures for the various companies that you name?

A. Well, Kelly would present his petit cash receipts to me and I would approve them and the company would reimburse his petit cash fund.

Q. In March, did you make a payment to Mr. Kelly to reimburse petit cash fund on account of some disbursements for the Seminole Boat Company?

A. Yes, sir.

Q. And to whom was that charged on the books of the Boulevard Mortgage Company?

A. Well, \$45.00 of it was charged to the Seminole Boat Company.

Q. The figure is \$45.81.

A. \$45.81.

Q. What did that cover?

A. That covered express package from the Winton Engine Company for parts for the Seminole, and that was 1.12. To R. C. Abel, expenses in connection with the Seminole \$20.00, to Abel, expenses in connection with Seminole, and \$20.00 in cash to Abel for Steward on the Seminole.

Q. Did you approve that expenditure?

A. Yes, sir.

Q. Anybody else approve it?

A. No, sir.

Q. Are these the slips?

A. Yes, sir.

Q. That support those two twenty dollar payments and the 1.12 item?

A. Yes, sir.

Mr. Underwood:

I offer these.

(The said papers were admitted in evidence and marked Respondents' Exhibit MM.)

Q. Did you make a payment in March, when I say you I mean the Boulevard Mortgage Company,—to the Florida East Coast Hotel Company?

A. Yes, sir.

Q. And what was that for, so far as the Seminole Boat Company was concerned?

A. Storage—or dockage rather, to the Royal Palm Dock.

Q. How much of it was charged to the Seminole Company?

A. 73.66.

Q. To whom was the balance charged?

A. To John S. Phipps.

Q. What was that for?

A. That was for storage, for his boat, the Clip.

Q. That was owned by him?

A. Yes, sir.

Q. Did the Seminole Boat Company own the Clip?

A. No, sir.

Q. So that when you got these bills from the Florida East Coast Hotel Company, you charged the wharfage for the Clip to Mr. Phipps and the wharfage for the Seminole to the Seminole Boat Company?

A. That is right, sir.



Q. On the books of the Boulevard Mortgage Company?

A. Yes, sir.

Q. Who approved those bills?

A. I did.

Mr. Underwood:

I offer them in evidence.

(The said papers were admitted in evidence and marked as Respondents' Exhibit NN.)

Q. Did the Boulevard Mortgage Company make payments to the Coconut Grove Boat Works in 1935?

A. Yes, sir.

Q. On account of the Seminole?

A. Yes, sir.

Q. How much, and to whom was it charged?

A. It was charged to the Seminole Boat Company, and the amount was \$200.

Q. What was the nature of the work?

A. Hauling, cleaning and painting the bottom, as per contract which I had made with them.

Q. Who decided to have that work done?

A. I did, sir.

Q. Did you have any conversation with John S. Phipps before that work was done?

A. No, sir.

Q. Who decided that the work should be done by the Coconut Grove Boat Works instead of Merrill-Stevens or somebody else?

A. I did.

Mr. Underwood:

I offer those.

(The said papers were admitted in evidence and marked Respondents' Exhibit OO.)

Q. In March, 1935, did you have anything to do with the purchase of a Prigg boat?

A. Yes, sir.

Q. Tell us about that.

A. Well, there was—the regular tender on the Seminole was not worth repairing, so we wanted to find another boat. Captain Baker recommended the purchase of one that was laying at the dock, the Royal Palm Dock, a very good boat, that the man had no need for. I wanted to buy it myself but I didn't have the money. Mr. John S. and I believe Mr. H. C. Phipps were in town at the same time,—I am not sure; I spoke to them about it, and I think the man was asking a thousand dollars for the boat and Mr. Phipps said he would like to have it personally, but any way, to see what I could find, and we would decide who would buy it. So later on—he said he would talk to—I don't remember whether it was his brother or his sister, about it. I bought the boat about a week later for \$950.

Q. And the company paid for it?

A. The Seminole Boat Company.

Q. It was paid for by check of the Boulevard Mortgage Company?

A. Yes, sir.

Q. And charged against—

A. The Seminole Boat Company.

Mr. Underwood:

I offer these.

(The said papers were admitted in evidence and marked Respondent's Exhibit PP.)

Q. You have said that in this instance, Mr. Hawkins, you talked to the stockholders of the Seminole Boat Company before you made the purchase?

A. Yes, sir.

Q. Was that a deviation from routine? Tell us what the routine was about incurring expenses of that sort.

A. Well, within reason, repair and maintenance of the boat, why I did it.

Q. Who determined whether it was within reason?

A. I did.

Q. Mr. Hawkins, I show you the Boulevard Mortgage Company voucher to Kelly, the cashier, and ask you to tell me how much of that concerns the Seminole?

A. \$20.80.

Q. What did that cover?

A. That covered the expense of Elliot Bryant, who was a sailor, and eighty cents for chrome plating some material.

Q. Who determined upon the chrome plating?

A. I did.

Q. Did you approve these expenses?

A. Yes, sir.

Q. Did anybody else?

A. No, sir.

Mr. Underwood:

I offer this.

(The said papers were admitted in evidence and marked Respondents' Exhibit QQ.)

Q. Did the Boulevard Mortgage Company make a payment to the Hamlin Mattress Company in April?

A. Yes, sir.

Q. To whom was that charged on its books?

A. Seminole Boat Company.

Q. What was it for?

A. It was for repairing some cushions on the stern of the boat, on the after deck.

Q. Who was it decided upon that?

A. I did.

Q. Who decided that the Hamlin Mattress Company should do it instead of somebody else?

A. I did.

Mr. Underwood:  
I offer that.

(The said papers were admitted in evidence and marked Respondents' Exhibits RR.)

Q. Did the Boulevard Mortgage Company make a payment to Frank T. Bugde Company in April 1935?

A. Yes, sir.

Q. To whom was it charged on the books of that company?

A. Seminole Boat Company.

Q. What was it for?

A. Some screens and miscellaneous hooks.

Q. Who decided upon the purchase of those?

A. I did.

Q. Did you have any conversation with John S. Phipps before you decided that?

A. No.

Q. Who approved the price?

A. The price?

Q. Who approved the price?

A. Webber approved the price on that one.

Mr. Underwood:  
I offer these.

(The said papers were admitted in evidence and marked Respondents' Exhibit SS.)

Q. Did the Boulevard Mortgage Company make a payment to D. L. Reisner, Inc.?

A. Yes, sir.

Q. Against whom was it charged?

A. Seminole Boat Company.

Q. What was it for?

A. Repairing some iron bands around the ventilation stack.

Q. Who decided on that work?

A. I did.

Q. Who decided that Reisner should do it?

A. I did.

Q. Did you have any conversation with John S. Phipps before you did that?

A. No, sir.

Mr. Underwood:

I offer that.

(The said papers were admitted in evidence and marked Respondents' Exhibit TT.)

Q. Now we have heard of Mr. Bernard; did the Boulevard Mortgage Company make a payment to Mr. Bernard?

A. Yes, sir.

Q. Against whom was it charged?

A. Seminole Boat Company.

Q. Was that the voucher check and Mr. Bernard's bill?

A. Yes, sir.

Q. Did you consult with anybody before you employed Mr. Bernard?

A. No, sir.

Q. Did you have a conversation with Mr. Phipps about employing a surveyor?



A. No, sir.

Q. Who was it decided to employ Mr. Bernard instead of somebody else?

A. I did.

Mr. Underwood:

I offer these.

(The said papers were admitted in evidence and marked Respondents' Exhibit UU.)

Q. Did the Boulevard Mortgage Company make a payment to Frank O. Pruitt, Inc.?

A. Yes, sir.

Q. Against whom was it charged?

A. Seminole Boat Company.

Q. On the books of the Boulevard Mortgage Company?

A. That is right.

Q. What was it for?

A. For \$8400. insurance policy.

Q. On the Seminole?

A. Yes, sir.

Q. Who determined about that?

A. I did.

Mr. Underwood:

I offer these.

(The said papers were admitted in evidence and marked Respondents' Exhibit VV.)

Q. I show you another bill and voucher check of the Boulevard Mortgage Company to Florida East Coast Hotel Company. Can you tell me whether or not any part of that was charged to the Seminole Boat Company, and what for?

A. Well, it was storage; part of it was charged to the Seminole.

Q. Storage of the Seminole was charged against—

A. Seminole Boat Company.

Q. Who approved those bills?

A. I did.

Q. Who was it decided that the Seminole should lay at the Royal Palm Docks?

A. I did.

Q. Did you have any discussion with Mr. John S. Phipps about that? Before you did it?

A. No, sir.

Mr. Underwood:

I offer this.

(The said papers were admitted in evidence and marked Respondents' Exhibit WW.)

Q. Did the Boulevard Mortgage Company make a payment to Paul's Boat Supply?

A. Yes, sir.

Q. Charged to the Seminole Boat Company?

A. Yes, sir.

Q. What was that for?

A. Various supplies,—paint, pipe fixtures and so forth.

Q. Miscellaneous minor fittings?

A. That is right.

Q. And who passed upon the purchase of those?

A. I did, sir.

Q. Did you get anybody else's approval before you did that?

A. Only Captain Baker; I would always consult with him.

Q. Have any discussion with John S. Phipps before you did that?

A. No, sir.

Mr. Underwood:  
I offer them.

(The said papers were admitted in evidence and marked Respondents' Exhibit XX.)

Q. Mr. Hawkins, did the Boulevard Mortgage Company make another payment to the Hamlin Mattress Company?

A. Yes, sir.

Q. And against whom was that charged?

A. Seminole Boat Company.

Q. Do you remember what that was for?

A. Well, I think it was recovering some kapok mattresses.

Mr. Underwood:

I might say to your Honor we haven't been able to find the bill of the Hamlin Mattress Company for this particular thing. Is that correct, Mr. Hawkins?

A. Yes, sir; that is the only work they did on that boat, they repaired these cushions with kapok and canvas covers.

Q. Is it your recollection that this is part of the same job?

A. Yes, sir.

Q. That you paid them somewhat before on account of?

A. Yes, sir.

Q. The same applies to this; who decided upon the necessity of the work?

A. I did.

Q. Anyone else consulted?

A. Only Captain Baker.

Mr. Underwood:  
I offer these.

(Said papers were admitted in evidence and marked Respondents' Exhibit Yy.)

Q. Here is another voucher, Boulevard Mortgage Company to Kelly, cashier; can you tell me whether or not any part of that is charged to Seminole Boat Company?

A. \$142.02 is charged to the Seminole Boat Company.

Q. And to who is the balance of it charged?

A. John S. Phipps.

Q. Now that is a great big pile of vouchers, Mr. Hawkins; I am not going to ask you to go through that and pick them out one by one. I will let them speak for themselves. Some part of this was charged to the Seminole Boat Company and some parts to John S. Phipps?

A. That is right.

Q. Did you approve that before it was paid?

A. Yes, sir.

Mr. Underwood:

I offer that.

(The said papers were admitted in evidence and marked Respondents' Exhibit ZZ.)

Q. Mr. Hawkins, did the Boulevard Mortgage Company make a payment to the Biscayne Boulevard Company in April, 1935?

A. Yes, sir.

Q. Was there some part of that charged to the Seminole Boat Company?

A. Yes, sir; \$76.76.

Q. What did that cover?

A. Venetian strip windows, shades, toilet seat, bath cabinet, paints, nails and so forth.

Q. Who determined upon the purchase of those articles?

A. I did, sir.



Q. Did you have any instructions or word from John S. Phipps about that?

A. No, sir.

Q. And against whom was that charged? The Seminole Boat Company?

A. Yes, sir.

Mr. Underwood:

I offer that.

(The said paper was admitted in evidence and marked Respondents' Exhibit 3-A.)

Q. Here is another voucher, Paul's Boat Supply, did the Boulevard Mortgage Company pay that?

A. Yes, sir.

Q. Charged it against what company?

A. Seminole Boat Company.

Q. What is it for?

A. Hose, paint. Here is a hose.

Q. That is a balance left over from previous bill, and one other small item?

A. Yes, sir.

Mr. Underwood:

I offer these:

(The said papers were admitted in evidence and marked Respondents' Exhibit 3-B.)

Q. Did the Boulevard Mortgage Company make a payment to the Electrical Equipment Company?

A. Yes, sir.

Q. Charged it against whom?

A. Seminole Boat Company

Q. What was it for?



A. It was putting condensers on the motors to eliminate static for the radio.

Q. Who decided upon doing that?

A. I did.

Q. Did you have any discussion with Mr. John S. Phipps before you did that?

A. No, sir.

Mr. Underwood:

I offer that.

(The said papers were admitted in evidence and marked Respondents' Exhibit 3-C.)

Q. Did the Boulevard Mortgage Company make a payment to Edward Parkinson?

A. Yes, sir.

Q. Did it charge some part of that to the Seminole Boat Company?

A. Yes, sir.

Q. What was it for?

A. It was for repairing two Delco armatures.

Q. Who decided upon that work?

A. I did.

Q. Did you have any conversation with Mr. John S. Phipps before that?

A. No, sir.

Mr. Underwood:

I offer those.

(The said papers were admitted in evidence and marked Respondents' Exhibit 3-D.)

Q. Did the Boulevard Mortgage Company make a further payment to the Biscayne Boulevard Company in May, 1935?

A. Yes, sir.

Q. Did it charge some part of that to the Seminole Boat Company?

A. Yes, sir.

Q. What was that for?

A. That was for flash lights, toilet seats, miscellaneous equipment, brooms, coffee pots.

Q. Who was that decided upon the the purchase of the equipment?

A. I did.

Q. Did you have any discussion with Mr. John S. Phipps about that?

A. No.

Mr. Underwood:

I offer that.

(The said papers were admitted in evidence and marked Respondents' Exhibit 3-E.)

Q. Did the Boulevard Mortgage Company make a payment to the Hopkins-Carter Hardware Company on June, 1935?

A. Yes, sir.

Q. Did it charge that to the Seminole Boat Company?

A. Yes, sir.

Q. What was it for?

A. It was for fishing equipment, a lengthy bill.

Q. Burners and tarpon hooks and sinkers and glass bottom boxes and things of that sort?

A. Yes, sir.

Q. And against whom was it entered on the books of the Boulevard Mortgage Company?

A. Seminole Boat Company.

Q. Who decided to buy that equipment?

A. I did.

Mr. Underwood:  
I offer them.

(Said papers were admitted in evidence and marked Respondents' Exhibit 3-F.)

Q. Now following the cruise, did Boulevard Mortgage Company make a payment to Captain Baker?

A. Yes, sir.

Q. And is that the check and the voucher?

A. Yes, sir.

Q. Against whom? Against whom was it charged on the books of the Boulevard Mortgage Company?

A. Seminole Boat Company.

Q. Who was it made the arrangement with Captain Baker as to the amount he should be paid himself, and the crew that he furnished?

A. I did.

Mr. Underwood:  
I offer that.

(The said papers were admitted in evidence and marked Respondents' Exhibit 3-G.)

Q. Did the Boulevard Mortgage Company make a payment to the Bay Supply Company?

A. Yes, sir.

Q. Against whom was that charged?

A. Seminole Boat Company.

Q. What was that for?

A. Gasoline, oil and kerosene.

Q. Who determined to buy the fuel from that company?

A. I did, on recommendation of Captain Baker.

Mr. Underwood:  
I offer that.

(The said papers were admitted in evidence and marked Respondents' Exhibit 3H.)

Q. Now did the Boulevard Mortgage Company make a payment to No-Name Lodge?

A. Yes, sir.

Q. In April, 1935?

A. Yes, sir.

Q. What was that for?

A. That was for groceries purchased.

Q. On what occasion?

A. On the last cruise the boat was out; Mr. Phipps was on the boat with his sister.

Q. To whom was that charged on the book of the Boulevard Mortgage Company when that was drawn?

A. John S. Phipps.

Mr. Underwood:  
I offer that.

(The said papers were admitted in evidence and marked Respondents' Exhibit 3-I.)

Q. Did the Boulevard Mortgage Company make a payment to Southern Food Stores, Inc. in April?

A. Yes, sir.

Q. In 1935, April?

A. Yes, sir.

Q. What was that for?

A. It was for groceries, supplies for the trip.

Q. Does the voucher show any charge when that check was drawn?

A. No, sir.

Q. Do you know to whom that was charged?

A. Eventually?

Q. At that time or eventually, either one.

A. It was charged to Mr. John S. Phipps.

Mr. Underwood:

I offer them.

(The said papers were admitted in evidence and marked Respondents' Exhibit 3-J.)

(Adjourned.)

May 9, 1939, two o'clock p. m.

Afternoon Session.

1644 Thereupon, RAY H. HAWKINS a witness produced in behalf of the respondent Phipps, resumed the stand and was examined and testified further as follows:

Direct Examination (Cont'd.)

By Mr. Underwood:

Q. Mr. Hawkins, you identified a number of vouchers this morning. Are those all that you have found in your files concerning payments on account of the Seminole between January 1, 1935 and the time of the fire?

A. Yes, sir.

Q. You described the routine with some particularity as to the expenses that were incurred during that period. Will you tell us how that routine compared with the routine that was followed in previous times back as far as the beginning of the Seminole Boat Company?

A. It was all the same.



Q. Do you know of your own knowledge whether any of the charges made as shown on those bills against the Seminole Boat Company were subsequently changed so that the expenses were charged to some other person or corporation?

A. No, sir.

Q. Have you been told whether or not such changes were made?

A. I understand—

Q. Just tell us whether you were told, first.

A. Yes.

Q. This may be objected to but I want to ask the question at any rate. Will you tell us what you had been informed as to changes made in those charges insofar as it affected the books of the Boulevard Mortgage Company?

Mr. Matteson:

Will the person who made the changes be a witness?

The Underwood:

At the proper time I shall produce the original records and the original entries showing these changes. I simply want to make it clear now. I am not withholding anything. Some of these items I shall show were eventually charged a different way than they were originally charged in these vouchers.

Mr. Boots:

Would you mind asking him, as a preliminary question, who told him. That might make some difference.

Mr. Underwood:

Not at all.

(By Mr. Underwood):

Q. Who told you, Mr. Hawkins?

A. Who told me about the charges that were changed?

Q. Yes.

A. I think that was Mr. Riley; I am not sure about that. I had some correspondence and telephone calls with Mr. Riley about it.

Q. Who is Mr. C. A. Weiss?

A. He is the head auditor in the New York office.

Q. I show you a memorandum. Does that bear his signature?

A. Yes, sir. Prior to this Riley told me and this confirmed what Mr. Riley told me.

Q. The date of this is 1938?

A. Yes, sir.

Mr. Underwood:

I am doing this as a gesture. I do not want it said later that I put all of this stuff in and left out items subsequently charged in another way. I think that perhaps Mr. Hawkins has stated all that he can say of his own knowledge.

Mr. Matteson:

Are you identifying that paper in any way?

Mr. Underwood:

I will if you want me to. I had not intended to.

Mr. Matteson:

He has referred to it, and if it comes up again we want to know what it is.

Mr. Underwood:

Do you want to have it identified?

Mr. Matteson:

In some manner. I don't care how.

Q. It is a letter addressed to Mr. Roy H. Hawkins, Miami office, from Charles A. Weiss, Jr., dated New York, April 14, 1938; is that right?

A. Yes, that is right.

Mr. Matteson:

Suppose you just let Mr. Hawkins initial that?

The Witness:

I already initialed it while or when it was filed.

Mr. Botts:

Just mark this for identification.

(Thereupon the letter above referred to, together with attachment hereto, were marked Respondents' Exhibits 3-K-1 and 3-K-2, for identification.)

Mr. Underwood:

There are some pencil notations on this Exhibit 3-K-2 for Identification which I shall erase. They are notes that I made on it.

Mr. Botts:

That's all right.

(By Mr. Underwood):

Q. Mr. Hawkins, you had been on the Seminole a number of times?

A. Yes, sir.

Q. Do you remember the window in the starboard side of the Seminole that goes into the alleyway?

A. Yes, sir.

Q. Did you ever use that window as a means of getting into or out of the engineroom?

A. Yes, sir.

Q. About how high was that window off the floor in the alleyway?

A. About to my waist. I used to pinch my stomach in getting in. I think I pinched my stomach every time I crawled in there.

Q. Did you have any difficulty getting in or out of that window?

A. No, sir.

### Cross Examination.

By Mr. Matteson:

Q. On what occasions did you ever crawl in that window?

A. Two or three times when the boat was laying at the Royal Palm Dock, and the last time I was out on the boat I went down there one day and spent about thirty minutes talking to the engineer. You could go from either the deck or this other one.

Q. You say you spent about half a hour down there talking to the engineer?

A. Yes; passing the time of the day.

Q. That was Schlapi?

A. Yes, sir.

Q. How high is that passageway that goes by the engineroom?

A. I don't remember.

Q. How tall are you?

A. Six feet.

Q. It was about six and a half or seven feet?

A. I don't remember. We didn't have to stoop to get in there. We had a door.

Q. Plenty of head room over your head?

A. Yes.

Q. This window was right close up under the deck above?

A. No, I wouldn't think so; it was about; for instance, as you walked along that companionway it was about so high.

Q. I am not asking you that now. I am asking you this: It is a fact, isn't it, that the top of that window was very close to the ceiling as you went through that passageway; pretty close to the top of the wall?

A. I really don't know.

Q. Do you know the dimensions of that window?

A. No, sir.

Q. Mr. Hawkins, you have been rehearsing a considerable number of transactions here relating to the Seminole, where supplies were bought, about expenses incurred and arrangements made, and all of those, and I think you said that you alone made the decisions; is that right?

A. On anything there that I testified to I made the decisions; if it was a question of repairs to the boat, that decision was usually made on the recommendation of Captain Baker; he would say, "This ought to be repaired" or "that ought to be done", and I would go ahead and order it repaired.

Q. But, as I understand it, you yourself would be the last word on that?

A. On any of these repairs.

Q. You didn't have to consult with anybody else?

A. No.

Q. And it was on your authority that all of that was done?

A. Yes, sir.

Q. You didn't have to consult with anybody else in your office or any other office?

A. No, sir. So long as the boat was in my charge I, was responsible for keeping it clean and keeping it in good order, and those were my instructions.

Q. From whom did you get these instructions?

A. Mr. Scott.



Q. When was that?

A. Well, of course, you see we were both in the office and all of these details I would usually handle, and then I would talk to Mr. Scott if there was anything of importance.

Q. That was so long as he was there?

A. Yes, sir; after that I would do it myself.

Q. After that you did it of your own responsibility?

A. Yes, because I was in charge of the office.

Q. When was it that Mr. Scott left?

A. If I remember correctly it was in the spring of 1934 that he moved to New York.

Q. Prior to that there had been substantial periods each year that he was away?

A. Yes, for instance, in the summer.

Q. Now after he left you were the head of the office?

A. Yes; that is, of the Miami office.

Q. The Miami office?

A. Yes.

Q. Now just what office is that?

A. The office of Bessemer Properties, Inc. and the New Miami Shores Corporation.

Q. Are there other corporations except those two?

A. There are one or two, yes.

Q. Everything that goes on in that office is under your direction, is that right?

A. That is right.

Q. Regardless of what company is involved?

A. That is right, sir.

Q. After Mr. Scott left you didn't consult with anyone else?

A. On the Seminole?

Q. Yes.

A. No, sir; that was routine business; you understand that on any of those repairs that it was with Captain Baker.

Q. With the advice of Captain Baker?

A. Yes.

Q. Did Captain Baker receive a regular salary as master of the Seminole?

A. He did the first two years; I think it was two hundred a month.

Q. What two years would that be?

A. I think that was 1929-30 and 1930-31.

Q. After that was he just paid when he worked on the Seminole?

A. Just paid when he worked on the Seminole. I believe in 1933 or 1934 Captain Baker purchased his own boat, but I don't remember what year it was. You see, the Seminole was such a large boat that it was too expensive for the ordinary man to charter, and that's the reason it never made a lot of money in the charter business. Captain Baker was available to take it out if we had a charter.

Q. And he was only paid when the vessel was actually in commission and operated?

A. Yes, sir, or when he did anything on it.

Q. From whom do you draw your salary as head of that office?

A. The salary is sent to me by Mr. Fowler who is the paymaster in the New York office, and it is charged to Bessemer Properties, Inc.

Q. It comes to you from New York in the form of a check?

A. Yes, sir.

Q. What sort of a check?

A. It is a check drawn on the Corn Exchange Bank.

Q. By whom?

A. By Mr. Fowler as paymaster.

Q. What is Mr. Fowler paymaster of?

A. Now you've got me. I presume that he pays most all of the district managers and probably the office force in New York.

Q. Are you a district manager?

A. Yes.

Q. District manager of what?

A. Miami.

Q. That is—

A. Bessemer Properties, Inc.

Q. Does Bessemer Properties Inc. operate other places than in Miami?

A. Yes.

Q. Where else?

A. Palm Beach, Florida, and Port Mayacka, Florida, and I believe they have an office in Delaware.

Q. It is a Delaware corporation?

A. Yes.

Q. I suppose their office in Delaware is just a nominal head office of the company?

A. I couldn't testify to that. My business was with the New York office through Mr. Scott and Mr. Layman, Jr.

Q. As a matter of fact is Mr. Fowler paymaster of the Henry Phipps' estate?

A. I couldn't testify as to that.

Q. You know there is such an organization, don't you?

A. Yes, sir.

Q. Is that incorporated?

A. I don't know, sir.

Q. This check which you get from the paymaster in New York, is that the only salary that you get?

A. Yes.

Q. You drew no salary from the Seminole Boat Company?

A. No, sir.

Q. No part of your salary was charged against the Seminole Boat Company?

A. No, sir.

Q. So that so far as the Seminole Boat Company was concerned your services were gratuitous, is that right?

- A. That is right.
- Q. What officer of the Seminole Boat Company were you?
- A. Secretary and Treasurer.
- Q. Who were the other officers of the Seminole Boat Company?
- A. Mr. Scott was the president and Mr. Riley was vice president.
- Q. Is Mr. Scott still president?
- A. Yes.
- Q. There has been no change in that since he left New York?
- A. No, sir.
- Q. Are you an officer of the Boulevard Mortgage Company?
- A. No, sir.
- Q. What is your connection with the Boulevard Mortgage Company?
- A. It is one of the corporations that does business through my office; it is one of the corporations of the principals of the company.
- Q. To whom do you refer as the principals of the company?
- A. The Phipps family and all of their kindred.
- Q. I understand that the Boulevard Mortgage Company does a sort of banking business for these various corporations and individuals that are in this list that you read into the record?
- A. Yes, sir.
- Q. Will you explain what you mean by "banking business"?
- A. It is really a clearance account for the various corporations and the individuals.
- Q. But as a matter of fact the Boulevard Mortgage Company pays bills and advances money for these various corporations, is that right?



A. Yes, sir.

Q. And then through a system of inter-company charges it eventually gets reimbursed, is that right?

A. That is right.

Q. I would like to get this set-up as clearly as I can: Henry Phipps was the father of John S. Phipps and Henry C. Phipps, is that right?

A. That is right.

Q. He is dead and there is an organization known as the Henry Phipps Estate, is that right?

A. That is right.

Q. Referring to the names on this list, we have identified Henry C. Phipps and John S. Phipps as the sons of Henry Phipps. Who is Mr. Howard Phipps?

A. That is a brother.

Q. He is also a son of Henry Phipps?

A. Yes.

Q. Who is Bradley Martin?

A. His mother was a Phipps. Is that Bradley Martin, Junior or Senior.

Q. It doesn't say.

A. There are two of them.

Q. We will say Bradley Martin, Senior?

A. He was the husband of one of Henry Phipps' daughters.

Q. Then he is a son-in-law of Henry Phipps?

A. That is right.

Q. And there is a Bradley Martin, Junior?

A. Yes, sir.

Q. Does this arrangement pertain to Bradley Martin, Junior, as well?

A. Yes, sir.

Q. Who is Mrs. Amy Guest?

A. She is a sister—she is a daughter of Henry Phipps, and a sister of John S. and Henry C. and Howard.



Q. Mrs. John S. Phipps is of course the wife of John S. Phipps?

A. Yes, sir.

Q. Who is Frederick E. Guest; is that the husband of Mrs. Amy Guest?

A. That is right.

Q. Who as Mrs. Bradley Martin. I see it down here as "Estate of Mrs. Bradley Martin".

A. Her father was Henry Phipps, and I think she was a sister of John S., H. C. and Howard Phipps and Amy Guest.

Q. She was the wife of Bradley Martin?

A. Yes, sir.

Q. And Bradley Martin's name appears on this list, too?

A. Yes.

Q. Who is M. G. Chace?

A. M. G. Chace as a friend of the Phipps family; he lives in Rhode Island, and he has no connection with this company.

Q. Now we have down here on this list a matter of about 15 corporate names. I take it that the reason why they are included is because the Phipps family are interested in these corporations; is that right?

A. Not all of them.

Q. Of course I assume, Mr. Hawkins, that if a stranger like myself, or even Mr. Botts here, should go into the Boulevard Mortgage Company, they would not be able to get the same service that is rendered to these various corporations and individuals?

A. If it was somebody we had any business dealings with we would extend them credit.

Q. I take it that the reason why these people are on this list is because they are members of the Phipps family?

A. Most of them; two or three of them are not; for instance, the Miami Corporation; that is a company that

we did business with, and it was owned by the Deerings, and we extended them credit.

Q. Wherever anyone or any corporation is in position to be on this list no charge is made for the services?

A. No, sir.

Q. I take it that all of these corporations mentioned in this list have at least an office in your office; is that it?

A. No, I wouldn't say that.

Q. What?

A. I don't know that all of them have an office there.

Q. All right, we will go down the list: Bessemer Investment Company?

A. No, sir.

Q. Bessemer Trust Company?

A. No, sir.

Q. Biscayne Boulevard, Inc.?

A. Yes.

Q. Duval Mortgage and Security Company?

A. Yes, sir.

Q. East Shore Company?

A. No, sir.

Q. Exchange Trading Corporation?

A. No, sir.

Q. Miami Plaza, Inc.?

A. Yes, sir.

Q. New Miami Shores Corporation?

A. Yes.

Q. Palm Beach company?

A. No, sir.

Q. Of course Palm Beach Company would be represented on the account of one or more of your companies here; is that right?

A. What?

Q. I say the Palm Beach Company would be represented on the books of account of one or more of your corporations?

A. We don't keep the books of the Palm Beach Company, and when we make any charge that they incur, they are billed for it.

Q. Phipps Realty Company?

A. No, sir.

Q. Where is the office of that company?

A. I am not sure; I believe that the Florida office is in Palm Beach; I am not sure of that. That company has not been used in a long time.

Q. Regent Land Company?

A. Yes, sir.

Q. You have already mentioned Seminole Boat Company?

A. Yes, sir.

Q. Suburban Miami Investment Corporation?

A. Yes, sir.

Q. The Blackhawk company?

A. Yes, sir.

Q. The Mayaca company?

A. Yes.

Q. The Boulevard Amusement company?

A. Yes, sir.

Q. And the Miami corporation?

A. No; that is a Deering company.

Q. Were all of those corporations that we have named controlled by members of the Phipps family?

A. No, sir; not all of them.

Q. But they were all corporations in which members of the Phipps family were interested?

A. Not all of them, but I think a majority of them were; you named one or two there that were not; for instance, the Miami corporation.

Q. Eliminate the Miami Corporation?

A. Yes.

Q. All right.

A. I don't know about M. G. Chace company.

Q. That is all.

A. I am not sure about M. G. Chace.

Q. How was that office here in Miami designated?

A. As Bessemer Properties, Inc.

Q. The office was at 1317 Biscayne boulevard?

A. Yes, sir.

Q. What name was on the door?

A. Bessemer Properties, Inc. and New Miami Shores Corporation.

Q. Those were the only two names on the door?

A. Yes.

Mr. Underwood:

You mean now?

The Witness:

Do you mean now?

Q. Yes.

A. Then it was—it used to be Biscayne Boulevard.

Q. Now the two names that you mentioned are on the door?

A. Yes.

Q. When was the change made?

A. I think the consolidation was about two years ago; changed from Biscayne Boulevard to Bessemer Properties, Inc.

Q. You speak of a consolidation.

A. Yes.

Q. What was that consolidation of?

A. A number of companies—Biscayne Boulevard, Mayaca Company, New Miami Shores Corporation; those are the only three I recall; there were other companies con-



solidated with them, but I do not have a list of them now.

Q. I think you spoke of your duties with respect to the Seminole as being in the nature of a manager?

A. Yes, sir.

Q. In other words, what you did was what any manager of a property would do with respect to the property that he was designated to manage?

A. I hope so.

Q. And that would be true whether the principal was a corporation or an individual, wouldn't it?

A. Yes.

Q. In other words, if you were designated as manager by an individual you would have done just exactly the same things as you did in connection with your duties with reference to the Seminole?

A. I would.

Q. This book which has been produced, Respondent Phipps' Exhibit "U"—I think it has been described as the minute book of the corporation; is that right?

A. I am sure that is the book you have there.

Q. Is this the only such record there is of the Seminole Boat Company?

A. The only Minute Book; we have lots of files, correspondence files.

Q. And this contains all of the minutes there are in existence of meetings, either of the stockholders or of the board of directors; is that right?

A. Yes, sir.

Q. I notice from the by-laws of the corporation as they appear in this book that your duties as Secretary are described as follows: "Seventeenth. "The secretary shall be sworn to the faithful discharge of his duty. He shall be secretary of and shall attend all meetings of the corporation, the board of directors, the executive committee and standing committees. He shall act as clerk there-



of and shall record all of the proceedings of such meetings in a book kept for that purpose. He shall give notice of meetings of stockholders and directors, and shall perform such other duties as shall be assigned to him".

There is nothing in your duties as prescribed in that paragraph that gives you authority as manager of the boat Seminole, is there?

A. I don't know; you put your own interpretation on it. Mr. Scott is the president of the company and he was the one that turned the boat over to me.

Q. Now with respect to the duties as prescribed for the Treasurer—you can look them over if you like. There is nothing in the by-laws that gives you any authority to do the various things that you have described yourself as doing with respect to the Seminole, is there?

A. I don't know, sir. If anyone is going to have charge of the receipts and disbursements, they should have charge of how they should be disbursed and how they should be incurred.

Q. This provides in general that you shall have custody of the funds and securities?

A. Yes, sir.

Q. And that you shall disburse funds and keep account of the same, is that right?

A. Yes, sir.

Q. There is nothing there that authorizes you to make decisions with respect to the management of the property of the corporation other than disbursing funds—

Mr. Underwood:

If your Honor please—

A. That is a question of interpretation.

Mr. Underwood:

I hesitate to object to that, but, after all, the language of the by-laws speak for themselves. That is a question of judicial interpretation.

Mr. Matteson:

I just want to find out where the authority came from?

The Witness:

I told you that Mr. Scott, president of the company, told me to take charge of the boat.

Q. You had no financial interest in the Seminole or in the Seminole Boat Company?

A. No.

Q. Neither did Mr. Scott?

A. No.

Q. Neither did Mr. Alley?

A. Not to my knowledge.

Q. And also the other officers—you were the three officers of the corporation?

A. Yes, sir.

Q. You were also the three directors?

A. Yes, we were the three directors.

Q. Were there any other directors?

A. No.

Q. There was no resolution at any time of the board of directors giving you authority to manage the boats, was there?

A. I don't recall that. My authority came from Mr. Scott, the president of the company.

Q. Did you ever attend a meeting of the board of directors of the Seminole Boat Company, that is, that you recall?

A. Yes, sir.

Q. When was that?

A. I don't remember the dates; the book will show them.

Q. Where was it held?

A. Well, I think a majority of them were here in Miami, but I am not quite sure about that. I think you will find them all properly recorded.

Q. Were the three of you ever assembled at one place for a meeting?

A. Yes, sir.

Q. The Seminole Boat Company was not in any sense a profit-making corporation, was it?

A. Unfortunately not.

Q. Well there was never any intention that it should be, was there?

A. Absolutely, yes.

Q. You know as a matter of fact that it is quite customary for owners of yachts and vessels to charter their boats from time to time for the purpose of reducing expenses, don't you?

A. No.

Q. You do know that individual owners of expensive yachts, when they are not needed for their own use, charter them from time to time?

A. I have had no connection with them. The only thing I know about this is that Captain Baker thought he could make a success out of chartering the boat.

Q. That was the idea of Captain Baker?

A. I don't know if it came originally from Baker, but I talked to Baker a little about it.

Q. How did it first come up; do you recall?

A. No, sir, I don't.

Q. Did he make the suggestion to you or to someone that he thought he could make some money chartering the boat?

A. I don't know who made the original suggestion but I know that I talked to Captain Baker about this

contract that I made with him, and he had every reason to believe that he could make a success out of it and make a good living out of his share.

Q. That was in 1929?

A. Yes. It was just too expensive to operate.

Q. As a matter of fact was there ever more than one charter of the Seminole?

A. Yes. I think there were several charters.

Q. Will you tell me when they were and to whom?

A. I can quote it from memory but we have records of those charters.

Q. Could you from your records make up a list for me of the charters the Seminole had, and the dates and to whom and the amount of the charter that was received?

A. I think that can be done.

Q. Will you do that for me? Not now, but later on?

A. Yes.

Q. When did your connection with the Miami office, as you call it, begin?

A. September, 1926.

Q. I have in my hand here this book marked Libelants' Exhibit 76 for Identification. This is an account book of the Seminole Boat Company, is it not?

A. Yes.

Q. And that is the only account book there is of the Seminole Boat Company?

A. Yes.

Q. And this was kept in your office?

A. Kept in my office, that is, part of the time. I think that later on that book was sent to Palm Beach but I am not sure.

Q. When was this book sent to Palm Beach?

A. I believe when the boat was sent there in 1931 or 1932.

Q. Let me ask you this: what bookkeeper kept this book while it was in your office?



A. I couldn't answer that; we had so many. We have a bookkeeper that could tell you.

Q. For instance, I show you this page 35; can you tell me whose handwriting that is?

A. I couldn't. Sometimes they put their initials on it. That would be a guess. I wouldn't know who wrote that.

Q. Was this book in your office at the time of the fire?

A. Why I think that ledger was in Palm Beach; I am not sure as to that.

Q. I would like for you to be just as sure as you can about that. What was the first you saw of this book after the fire?

A. I am sure that the—I don't remember.

Q. You were in charge of that office?

A. Yes, but you asked me when was the first time I saw that. I think we sent that book to Palm Beach for them to keep the records in 1931 or 1932; I cannot be certain about that.

Q. Then the entries in this book for 1932 and 1933 were made in Palm Beach?

A. They may have been, yes.

Q. Were they or weren't they?

A. I don't know.

Q. This book was part of the records that were in your custody as treasurer of the Seminole Boat Company?

A. Yes, and if they sent it to Palm Beach I would have a receipt in the files for it.

Q. Have you a receipt in the files for it?

A. I don't know; I will have to look.

Q. Where is that file?

A. I don't know. Do you have it?

Q. I have no objection to you asking Mr. Underwood, if you wish.

A. They have all of the files; so I don't know where it is.



Q. You say there would be a receipt showing that this file was transferred to West—to Palm Beach?

A. There would be some record of it, yes.

Q. Well, I would like to see that record. Can you get it for me?

A. If I can find it; I can find it if it is in the files.

Q. I would like to have either the witness or counsel for the witness produce that record. Do you know where this book came from when it was produced in Court here today?

A. I turned them over to Mr. Alley, all the books that I had.

Q. When was that?

A. That was after the fire.

Q. Was this book one of those books?

A. That I am not sure. I turned the minute books over to him; I know that. Also the stock book.

Q. When was that?

A. It was after the fire.

Q. How long after the fire?

A. That I don't know.

Q. You have no recollection of that?

A. Not at the time.

Q. Do you now?

A. No.

Q. Was it a short time after the fire or months after the fire?

A. I wouldn't want to say, sir; I don't know.

Q. Have you a record of that?

A. I would have, yes.

Q. Where is that record?

A. Probably in the files.

Q. When you turned those books that you had over to Mr. Alley after the fire was this book one of them?

A. I can't say for sure.

Q. Will you find out and let us know?

A. Yes.

Q. And let us have what record you have on the subject?

A. Yes, sir.

Q. Do I understand that you cannot identify the handwriting of none of the bookkeepers whose writing appears in this book?

A. No, sir.

Q. Who was your head bookkeeper in 1933?

A. Mr. L. M. Handley.

Q. Is he still with you?

A. He is not in Miami, sir; he is in New York.

Q. And his assistant was—

A. Mr. Wilson.

Q. And he is still there?

A. Yes.

Q. How many bookkeepers did he have working under him?

A. From two to six, depending on the time of the year.

Q. Which one of them in particular was—in other words, was one of them in particular assigned to a particular set of books?

A. That was usual, yes.

Q. Can you tell us who was assigned to keep the books of the Seminole Boat Company?

A. No, sir. Mr. Wilson or Mr. Handley would do that; I would look to them to keep the records straight.

Q. The Iolanthe was sold recently, was she not?

A. Several years ago; about three years ago, I should say.

Q. Three years ago?

A. Yes.

Q. Did you have something to do with arranging the sale of the Iolanthe?

A. Yes, sir.

Q. What did you have to do with that?

Mr. Underwood:

I objected heretofore to anything about the Iolanthe, as it is not a part of this case, and I would like to make that same objection again.

The Court:

What did I rule before?

Mr. Underwood:

You ruled against me. I think you said you would take it and see what developed.

The Court:

All right, I will do the same thing now.

A. I negotiated the sale for it.

Q. To whom was she sold; do you remember?

A. Yes; to a man by the name of Young who lives over on Normandie Isles; traded it for a lot.

Q. Prior to her sale did you arrange to list her with various brokers?

A. Yes.

Q. In similar manner as you did with the Seminole when there was some thought of selling her?

A. Yes.

Q. Did the Boulevard Mortgage Company pay accounts with respect to expenses of the Iolanthe?

A. Yes, sir.

Q. In a manner similar to that in which the expenses of the Seminole were paid?

A. Yes, sir.

Q. Only in that case, I take it, the expenses were charged to John S. Phipps?

A. That is right.

Q. He was the owner of the Iolanthe?

A. That is right.

Q. And I assume it was at Phipps' instructions that you arranged for and negotiated the sale of the Iolanthe?

A. Yes, sir. I would like to correct that. I don't know whether he told me or Mr. Riley told me; I am pretty sure that it was Mr. Phipps, though.

Q. In any event, the instructions came, directly or indirectly, from Mr. Phipps?

A. That is right.

Q. Who was Mr. Riley?

A. Mr. Riley is now manager of the Palm Beach office; formerly he was assistant to Mr. Alley of the Palm Beach office.

Q. When did he become head of that office?

A. A couple of years ago.

Q. Was that before or after the fire?

A. I am not sure about that.

Q. Does he hold a similar position in the office at Palm Beach to the one that you hold here?

A. Yes, sir.

Q. What did he have to do with the Seminole?

A. I can't testify about Mr. Riley, but I think he had charge of the Seminole when it was in Palm Beach under Mr. Alley.

Q. To the best of your knowledge he performed similar functions in Palm Beach to those that you performed down here?

A. Yes, sir.

Q. And the boat was usually stored at Ft. Lauderdale?

A. Yes.

Q. For a number of years?

A. Yes.

Q. When she was at Fort Lauderdale who would she be under, you or Mr. Riley?

A. Under Mr. Riley.

Q. Mr. Riley?

A. Yes.



Q. As a matter of fact she was usually stored there the greater part of the year, was she not?

A. Yes, sir.

Q. Mr. Riley had no connection with the Seminole Boat Company, did he?

A. No, sir; except working under instructions of Mr. Alley.

Q. He drew no salary from the Seminole Boat Company?

A. No.

Q. What became of the Prigg boat that you have spoken of?

A. It was sold sometime after the fire, I believe.

Q. To whom was she sold?

A. To Mr. John S. Phipps.

Q. Is that the name of the boat?

A. The name of it was Ro, Junior.

Q. Prigg was the type of boat?

A. Yes.

The Court:

She was sold to whom?

The Witness:

Mr. John S. Phipps.

Q. I understand that you arranged for the employment of Mr. Bernard as a surveyor to examine the Seminole, is that right?

A. That is right.

Q. And that was at the time that a sale of the vessel was contemplated?

A. At the time of that and at a time that she was going out; it all happened about the same time, the decision to make a trip on her and the sale, within a week or ten days; but I employed Bernard specifically because



of the deal that I had for the sale of the boat—the purchaser wanted to have the bottom examined.

Q. And that was the real reason for the employment of Bernard at that time?

A. Not only that; he wanted to know the condition of the boat and we had decided to put insurance on it.

Q. That was the principal moving purpose, in connection with the sale of the boat, is that right?

A. It was part, however, I wanted to know the condition and I wanted to find out about the value. It so happened that the prospective purchaser wanted to especially examine the bottom, and we wanted to place insurance on it because she was tied up at the Royal Palm Dock, and if I remember right I had the insurance placed on it before I sent her up to the Cocoanut Grove Boatyard, so that she would not be in transit without insurance. I am not sure whether it was put on before or later on.

Q. You say the insurance was placed on it before she went to Cocoanut Grove?

A. I am not sure; the record will show that.

Q. What was the date that that trip began?

A. To the Keys?

Q. Yes.

A. I don't know; I don't have—I have a memorandum of it; I think it was sometime around the latter part of March or the first part of April, 1935.

Q. Have you any record that you can refer to quickly and tell us?

Mr. Underwood:

The 6th of April.

A. Then the insurance was placed on it before. She was repaired at Donovan's early in March.

Q. Was that in March?

A. Yes.

Q. What was the nature of the repairs there?

A. Scraped the bottom and painted the hull.

Q. Is that all?

A. That's all, yes.

Q. The boat was brought down from Ft. Lauderdale the latter part of February, wasn't it?

A. That is right.

Q. I understand that the reason for bringing her down at that time was because of the contemplated sale?

A. That is right; and Captain Baker thought also that he might be able to get a charter if he had it tied up at the Royal Palm Dock where people could view her.

Q. Between the time that she left Ft. Lauderdale and the time that she went on this cruise, the only work that was done on her of any importance was this work done at the Coconut Grove Boatyard, is that right?

A. No. There were quite a few minor things done right at the Royal Palm Dock, painting and varnishing and repairing little things, and that is only the little work that Captain Bernard recommended on the hull.

Mr. Matteson:

I move to strike out what Captain Bernard recommended on the hull. I asked him what was done.

The Court:

I think you are entitled to have that stricken.

Q. The one piece of work done by the Coconut Grove Boat Works, in addition to the scraping and painting of the bottom, was putting this plate on the stern?

A. No; that wasn't done at the Coconut Grove Boat Works; that was done at the Royal Palm Dock.

Q. You are referring to the plating of the stern?

A. Yes.

Q. That was reinforced with concrete?

A. Yes, to keep it from swaying.

Q. And that was done at the Royal Palm Dock?

A. Yes.

Q. While the boat was afloat there?

A. Yes; the only thing that was done at the Coconut Grove Yard was to scrape the hull and paint it.

Q. Were there any log books kept on the Seminole?

A. Yes, sir.

Q. Were they delivered to your office from time to time?

A. No; they lay on the boat.

Q. Are any of those log books in existence now?

A. I understand they were destroyed.

Q. As far as you know there are none in existence?

A. That is right.

Q. Now at the time you brought the boat down from Ft. Lauderdale there were only two people who were interested in the Seminole Boat Company, and they were John S. Phipps and Henry C. Phipps?

A. That is right.

Q. Now it is true, is it not, that Mr. John S. Phipps took much more lively interest in the vessel than Mr. H. C. Phipps?

Mr. Underwood:

I object to that.

The Court:

What is the ground of the objection?

Mr. Underwood:

On the ground that it is immaterial in this case; on the ground that it calls for a comparison on the part of the witness. I have no objection to the witness being asked what Mr. H. C. Phipps did and what Mr. John

C. Phipps did, but I do not think it is proper to get at it by way of comparison.

The Court:

I think it is a proper question. I will overrule the objection.

A. Yes, sir.

Q. And he used her more, did he not?

A. Not to my knowledge, no, sir.

Q. You did arrange to apply for insurance on the yacht Seminole prior to your last trip to the Keys, didn't you?

A. Yes, sir.

Q. Is it a fact that you arranged for insurance for only a short period or in such way that it could be canceled in a short period?

A. I don't remember that I so arranged it.

Q. Your purpose was to see that she was covered for that trip, is that right?

A. I may have done that.

Q. Your purpose was to see that she was covered for that trip?

A. Yes; that is the policy we have with automobiles and boats and everything, to see that they are insured when they are in use.

Q. As a matter of fact the insurance was canceled shortly after this trip, wasn't it?

A. Yes, sir.

Q. Do you remember that shortly after the time you applied for the insurance on the Seminole that you were asked for a credit report on the Seminole Boat Company by the Retail Credit Company service?

A. I don't remember that.

Q. Do you recall that a representative of that service came to your office and interviewed you with respect to the Seminole Boat Company?

A. I don't remember it, sir. We had no occasion to seek credit.

Q. Of course it may be that the insurance company wanted to know who the Seminole Boat Company was?

A. I see. I don't remember about that at all.

Q. I show you this credit report, or a copy of it, and ask you if you will just read it and see if that refreshes your recollection?

A. I don't know. These people call the office daily about all kinds of credits, and I rarely ever see them. I never saw that report.

Mr. Underwood:

Will you have that marked, please?

The Witness:

That is not correct.

Q. I will ask you about that.

Mr. Botts:

I offer this for identification.

(Thereupon the document above referred to was marked Libelants' Exhibit 106 for Identification.)

Mr. Underwood:

Mr. Botts, may I see it?

Mr. Botts:

Would you mind my reading it. I have never seen it before.

Mr. Underwood:

Certainly not.



(By Mr. Matteson):

Q. Were you vice president of the Biscayne Mortgage Company and New Miami Shores Corporation on April 18, 1935?

A. Yes, sir.

Q. Were you local agent for the Phipps' interests at that time?

A. Yes, sir.

Q. Secretary of the Seminole Boat Company?

A. Yes, sir.

Q. Is it true that the Seminole Boat Company is a closed corporation or was a closed corporation on that day and not a trading company and not engaged in business?

A. No, sir.

Q. I want to ask you this direct question: if it is a fact that you were interviewed by Mr. J. E. Lawson on behalf of the Retail Credit Company on or about April 18, 1939, and if it is not a fact that at that time you stated to him in words or in substance: "The Seminole Boat Company is a closed corporation, and is not a trading company and is not engaged in business"?

A. I did not say that; I don't remember being interviewed by anybody from the Credit Bureau; as a matter of fact, a majority of the times when they come to my office I don't talk with them; they talk to one of the bookkeepers.

Q. Is it not a fact that at that time you said to the man that I have mentioned, in words or in substance the following: "This is a holding company for the yacht Seminole, which has been in the Phipps family for the past five or more years and is now principally owned by John S. Phipps, the older brother of H. C. Phipps, the latter being no longer interested in the company or in the boat"?

A. I did not say that.

Q. Was that the fact?

A. It is a fact; I didn't make that statement.

Q. I mean is the statement which I read to you a true statement?

A. It is not.

Q. Can you recall anything that you might have said to such a representative which might have been misinterpreted to mean what I have just read to you?

A. Well, to begin with I rarely talk to any of these credit representatives, for the simple reason that we are not interested in seeking credit, and usually when they call at the office that is what I tell them.

Q. Well it is true, I assume, that you don't remember talking to this man at all?

A. That is right. And I certainly would not have made that statement.

Q. But if you had said to him that you declined all financial information, which was an established policy of the company, and that you traded for cash locally, that would have been in character with your attitude?

A. Yes; if I was interviewed that is what I would have said.

Q. Let me put it this way: This last statement which I read to you, in which it was stated that the boat Seminole is now principally owned by John S. Phipps, the older brother of H. C. Phipps, the latter being no longer interested in the company or in the boat"—is in what respect not true?

Mr. Underwood:

I object to incorporating in the record this way the contents of the paper, if that is what Mr. Matteson is doing. Of course I have no objection to his asking Mr. Hawkins if on a certain date he made a certain statement, but I do not think it should be incorporated in the record as a part of this paper; it is getting in by indirection what he cannot, at least yet, do directly.

Mr. Matteson:

I am not intending by my question to do that. This is cross examination and I am simply trying to find out—

Mr. Underwood:

The only point I make, your Honor, is that I do not want any part of this to go in the record indirectly in this fashion. If it is understood that no part of the document is in evidence, that is all right.

Mr. Botts:

That is understood.

The Court:

I think you should interrogate him, Mr. Matteson, independent of quoting from the instrument. You have asked him if that was true or not, and he said not. Now then I think you can go further and elaborate on that, but do not purport to quote from the document. I will reverse my ruling and sustain the objection.

Q. I will amend the question. Irrespective of any paper that is involved, I will ask you to tell me what is wrong or what is untrue, as of April 18, 1939, with the statement that at the time the boat Seminole was principally owned by John S. Phipps, the older brother of H. C. Phipps, the latter being no longer interested in the company or in the boat?

A. What date was that, sir?

Q. April 18, 1935.

A. I think that on that date the records will show that Mrs. Guest was part owner in the boat, so that statement is incorrect.

Q. Then it is true or was true as of that date that Mr. H. C. Phipps was no longer interested in the company or the boat?

A. I am not sure of the date, but the records will show that.

The Court:

What was that date?

Mr. Underwood:

I think it was the 23rd of March that the transfer was made and the new stock certificate issued. The stock certificate to Mrs. Guest was dated March 23, 1935, and the canceled stock certificates which had been issued to Mr. H. C. Phipps are in the stock certificate book, and there is written across the face of them the word "canceled", and then the figures—either 3-23-35 or 3-25-35. I can't quite make it out. It must be March 23rd, the same date as the stock certificate to Mrs. Guest.

Q. Now Mr. Hawkins, getting back: you have told us about a lot of transactions here relating to what might be termed minor repairs to the Seminole; routine expenses. If any major overhaul or substantial expense out of the ordinary were to be incurred on the Seminole, do I understand you would have consulted the stockholders in that event?

A. I would have; yes, sir; or Mr. Scott if he had been there.

Q. Where would you put that upper limit of the expenses that you would incur without consultation with some one else?

A. Well there is no particular limit. Anything within reason. The question of the rebuilding of any part of the boat, naturally, involving substantial money, I would incur to the limit of five hundred dollars or more without talking to anybody. I do that daily on other things.

Q. And that sort of thing you do in all your various capacities there?



A. Yes.

Q. At the Miami office, no matter what company is involved, or individuals?

A. Yes.

Q. Now who originated this idea of selling the Seminole? Who first spoke of that?

A. Well I don't remember. After the boat did not prove successful for charter, why we had a number of inquiries for the sale of it from time to time, and every time we would have the boat examined, try to get an offer on it. This last time I think I was responsible for it.

Q. Well you must have understood in some way that it was agreeable to the shareholders of the corporation, did you not?

A. Oh yes.

Q. After all, disposing of the principal asset of the corporation is a serious step, isn't it?

A. Sure. When I brought her to Miami the last time, I talked to both the stockholders about it—to J. S. and H. C. Phipps, about it.

Q. You had listed the boat for sale with various brokers, hadn't you?

A. Yes, sir.

Q. When did you first do that, do you recall?

A. Well of course the boat—it was generally known the boat was for sale, any time from 1931 or '2, on. But the last time that I listed it, and asked the brokers to make an offer for sale, was in February 1935, after I had brought her from Lauderdale. I think the reason that that came about was that I had an inquiry, and the broker said it was too much trouble taking his prospects to Fort Lauderdale, getting permit from Capt. Pilkington to go aboard, and all that; it was much easier to see it here.



Q. As a matter of fact, the expense in connection with this boat had been out of all proportion to the use that was obtained for her, for several years, hadn't it?

A. Yes, sir.

Q. So that she was a sort of a white elephant on the hands of whoever had her; is that right?

A. Well that depends on how you look at those things.

Q. And you had known or understood over a period of years that if an opportunity to sell the boat came, that the stockholders would be agreeable to that; is that right?

A. The boat was always available for charter or sale, if the proper sale could be made.

Q. And that was so because you understood that was what the stockholders wanted; is that right?

A. Well I understood that they would like to sell it if they could get a price for it; would consider selling. I never had a definite price on it.

Q. Now was there ever any resolution of the board of directors or stockholders of the company authorizing you to negotiate for the sale of the boat?

A. No, sir. There was authority from the stockholders; ample authority, verbal authority.

Q. Verbal authority?

A. Yes, sir.

Q. The result of your conversations?

A. Yes, sir.

Q. But there was no authority contained in any resolution on the books of the company and their Minutes?

A. No, sir.

Q. Was there any resolution on the books of the company at any time, either the board of directors or the stockholders, authorizing you to enter into this agreement with the Boulevard Mortgage Company for the advancing of expenses and the reimbursing of the Boulevard Mortgage Company with respect to that?

A. No, sir.

Q. Was there ever any resolution authorizing you to open a bank account for the Seminole Boat Company?

A. Well I couldn't answer that. The records—I don't remember how we opened the account, whether it was by resolution or Minutes; I don't remember how we did that. The record would show that. You see that was when it was first incorporated.

Q. As a matter of fact, I have looked through this minute book and I would like to have you tell me whether this is a fair statement of the contents: that there are minutes of various meetings of the board of directors and of stockholders' meetings, but there is no record of any transaction of any business at any of those meetings, with the single exception of the ratification of the contract which you made with Mr. Baker. Is that a correct statement?—and the election of officers.

Mr. Underwood:

I object to that as calling for a conclusion as to the contents of the document, which is in evidence. The best evidence of that is the book itself, which is in evidence.

Mr. Matteson:

I haven't any objection to that; I was simply trying to shorten the thing up.

The Court:

Well I doubt if Mr. Hawkins has read that over lately, and I don't think he should be called on to confirm or disaffirm your version based on a reading today; so I think I had better sustain the objection.

Mr. Underwood:

I think, Mr. Matteson, there is one resolution here, at

a meeting on November 14, 1938, the directors did pass a resolution authorizing the treasurer to open a bank account with The First National Bank of Miami.

Mr. Matteson:

Yes; I missed that. This book is in evidence, is it not?

Mr. Underwood:

It is.

Mr. Matteson:

I will withdraw any objection to it, then.

Q. Mr. Hawkins, can you tell us how often and by whom the Seminole was used from 1929 to 1935?

A. No, sir.

Q. Was there any record of this kept in your office?

A. Yes.

Q. And what was the nature of that record?

A. Well there is a record kept of all the activities of the boat; all expenses and all charters.

Q. Well is that in any other place than in this account book that we have talked about, which is Exhibit 76 for identification?

A. The expenses would be in that book.

Q. Yes. Now is there any other record of the use made of that boat by any persons whatever, whether charterers or not?

A. Of course we keep a correspondence file on everything, and naturally if the boat was in use there would be expenses, so I presume you would find it. I wouldn't want to testify from memory.

Q. Well this record here as I gather from the testimony, goes no further as a general record than 1933. This journal record in this book, which is the day by day record, I take it; stops at the end of 1933.

A. Is that the Seminole?

Q. Yes. And beyond that—

Mr. Underwood:

That is just one account.

Mr. Botts:

No, that is all.

Mr. Matteson:

That is all I am referring to, is the journal account.

Mr. Underwood:

It is the journal account, but it is one company, isn't it?

Q. This is the only one. And other than that there are simply a number of ledger accounts under different headings; so that as a running record this stops at the end of 1933. What I want to ask you is, is there any other record than this, of the use of the Seminole by any persons whatever, from this time on?

A. Any use of the Seminole would be—expenses would be kept in the ledger; any use would be referred to in the correspondence file. Whether they are in there or not I don't know—in that particular ledger.

Q. Is the correspondence file a record that has been produced here?

A. I don't know.

Mr. Underwood:

I think not.

The Court:

Was a ledger account opened with a charterer, debiting him with the amount of the charter, and giving him credit?



A. No, sir; if a charter was obtained, he would pay a certain amount, you see, and that would go in the Seminole boat account, and the expenses would be deducted.

The Court:

I say was any record kept in that book, which is a combination journal and ledger, as I understand it: was there any record kept in there of receipts from charter-parties?

A. Oh yes, of receipts and disbursements.

The Court:

Can you point out an account with a charterer?

A. I don't actually keep the books myself, Judge, but I think I could quickly do that. I think there were receipts and disbursements in 1929.—Here you are, sir.

Mr. Underwood:

There is no number on that page, is there, Mr. Botts?

Mr. Botts:

No number on any of the pages.

Mr. Underwood:

The witness indicates a page headed "Charter of Seminole".

Q. Now by referring to this account here on the page headed Charter of Seminole, just tell us what that indicates. We are not experienced in bookkeeping; we want to know what it means.

A. Neither am I an expert in bookkeeping. I didn't keep this ledger. I presume it means they spent \$150. on this date, and the receipts were \$3300.

Q. Well I show you that these two columns seem to balance when you get to the bottom of them. Isn't it a



fact that the left hand column in fact is the total receipts, and the right hand the individual payments aggregating that amount?

A. I don't know.

Q. It would seem to indicate that in the year 1929 there was a total of \$8550?

A. That is right.

Q. —received, and in December 1930 \$4284. received?

A. That looks right.

Q. That would indicate two charters, is that right,—one in each year?

A. I couldn't say to that, whether it was one charter or two charters.

Q. You don't remember any more than two charters, do you?

A. Well, I don't remember the number at all.

Q. Now Mr. Hawkins, Mr. John S. Phipps did use this boat occasionally for trips, did he not?

A. Yes, sir.

Q. And when he wanted to make a trip on the Seminole, how would he arrange for that?

A. Well, it all depends on where the boat was. I don't recall but this one trip that he made; I think he did make two trips, but I don't remember. The last one—

Q. You mean you don't recall any one except the one in 1935?

A. I am sure there was another trip, but the date I don't remember.

Q. How did he arrange for the trip in 1935?

A. He told me he would like to go out on the boat.

Q. And what did you say?

A. I asked him when he wanted to go, and so forth; the number of his party.

Q. No question about his right to use the boat, was there?

A. Certainly not; he was a stockholder.

Q. You didn't have to consult with Alley or Mr. Scott or any one else to find out whether he was to have the privilege of using it, did you?

A. No, sir.

Q. When he told you he wanted to use the boat, that was the end of it, wasn't it?

A. As far as I know.

Q. In other words, you recognized his authority in that respect?

A. Yes.

Q. Now I noticed there was one item here that you referred to of personal property tax on the Yacht Seminole, which you paid and which was charged to the Seminole Boat Company, I think you said. Of course if the yacht had been owned individually, that tax would have had to be paid just the same, wouldn't it?

A. Yes, sir; I think so.

Q. I noticed another item there, that you bought some condensers on the spark plugs of the engines.

A. Yes, sir.

Q. —to avoid interference with the radio?

A. Yes, sir.

Q. How did that come about?

A. The boat was lying at the Royal Palm Dock and we had a number of men working on her, and they told me the radio wasn't any good, they would like to fix it; and I told them to fix it.

Q. Well the engines on the boat weren't operating while she was lying at the Dock, were they?

A. They would turn them over every day; this generator would run every day, to keep the batteries charged.

Q. Were those arrestors on the main engine or the generator?

A. I don't remember. If I remember, there were clips near the radiator.

Q. Well you have told us about the use of the yacht, if a stockholder wanted to use the yacht, they asked you, and they had the right to do so; is that right?

A. There was no question.

Q. In other words, the whole purpose of the arrangement that you had was for the convenience of the stockholders?

A. No, sir. The purpose was to put the boat in charter.

Q. And outside of that, your purpose was to suit the stockholders; is that right?

Mr. Underwood:

May I ask if the question asks for this witness' purpose, or the stockholders purpose?

Q. I am talking about this witness.

A. Well I will answer this: in the last trip that Mr. Phipps took on the boat, at which I was a guest, he asked me before went out if we had any prospects for charter; otherwise he wouldn't use it; he would use a smaller boat.

Q. Well outside of this ever imminent occurring possibility of a charter, your aim and object in the management of the Seminole was that she was available, ready and suitable, satisfactory, to the stockholders? That's right, isn't it?

A. And to Mr. Scott, who was the president of the company; and he gave me my instructions.

Q. Of course you and Mr. Scott were in a similar position with respect to the stockholders, weren't you?

A. Yes; but as long as he was here I was answering to him.

Q. I think you said that when the offer of \$5,000 was under consideration and you consulted with Mr. Henry Phipps, he was quite ready to sell the boat?

A. Yes, sir; he at first asked me—I met Mr. Phipps at the race track, about a week before the Derby of that

year; told him of the offer. He said he thought it was awfully low, but what was my recommendation; and I told him to sell it, that he couldn't make any money out of it. He said "All right, sell it."

Q. But it was Mr. John S. that held back on selling?

A. Mr. John S. said that he was undecided; that he didn't want to sell for that price, it was so small; he would let me know what he wanted to do.

Q. In other words, as between them it would appear that Mr. John S. had the greater attachment for the boat; is that right?

A. I don't know. He probably thought it was worth more.

Q. You are familiar with the provisions of the certificate of incorporation that has been offered in evidence, and connected with your testimony, are you not?

A. Yes, sir.—In a general way; I haven't read it in a long while.

Q. The stock of the Seminole Boat Company was not assessable, was it?

A. I don't remember; I would have to look at it to find out.

Q. Will you verify that for me when you have an opportunity? I won't ask you to do it now.

Mr. Underwood:

The stock certificates and certificate of incorporation speak for themselves on that, don't they?

Mr. Matteson:

I believe they do, but I would like to have it clearly in the record.

Mr. Underwood:

If the witness is to be asked that, I object to it on the ground they speak for themselves.



Q. I call your attention to paragraph 7 of the certificate of incorporation.

The Court:

He is what the charter provides: (reading).

Mr. Matteson:

And there is further provision, which is No. 7, "The private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever." Nevertheless I understand that in every year of the incorporation of the Seminole Boat Company there was a more or less substantial deficit in expenses?

A. Not such—

Q. Well I say, a more or less substantial; which was actually made good by the stockholders at the end of those years. Is that right?

A. Yes, sir.

Q. So that those, in view of these provisions, were voluntary payments?

A. Yes, sir.

Q. And will you tell me—referring to the exhibit that you have introduced, how much is outstanding on the books of the Seminole Boat Company at the present time? Can you tell me that?

A. I couldn't without having the bookkeeper check the records for me.

Q. Will you do that for me?

A. Yes, sir.

Q. Getting back to this Prigg boat; how long was that held, do you know?

A. How long did the Seminole Boat Company own it?

Q. Yes.

A. No, sir; I don't remember, but it was two or three years.



Q. And it was resold to Mr. John S. Phipps for the exact price that you paid for it originally?

A. Yes, sir.

Q. And in the meantime do you know whether the purchase price of that yacht was treated as an expense of the corporation or not?—or whether that remained as an open account on the books during that period?

A. The books would have to show that. It was charged to the Seminole Boat Company; that is the way I charged it when I bought it.

Q. And outside of that, the only asset that the Seminole Boat Company had at the time of the fire was the Yacht Seminole, is that right?

A. Yes, sir.

Q. And that vessel was rendered practically worthless by the fire, was it not?

A. Yes, sir.

Q. So that the only substantial asset of the corporation was destroyed by the fire?

A. Yes, sir.

Mr. Matteson:

If your Honor please, there is this book, ledger account, and all these vouchers, and two more files of vouchers with sheets which summarize them, which have been offered here today, which will take some time to study them, to find out just what they signify. If it is agreeable, I would like to stop at this point and reserve my further examination until I have had an opportunity to study those documents.

The Court:

Any objection to that?

Mr. Underwood:

No objection to that. How much time do you want?

Mr. Matteson:

I don't think it will take so very long.

Mr. Underwood:

Shall we recess now and continue in the morning?

Mr. Matteson:

That is all right with me. Mr. Botts probably has some questions he wants to ask.

Mr. Botts:

If it is agreeable, I have some questions that I can ask, and then if Mr. Matteson could look over these documents during the evening perhaps, we can go ahead; or we can adjourn now; just as you please.

Mr. Underwood:

As you wish; it is immaterial to me.

The Court:

I believe we can make time by proceeding.

By Mr. Botts:

Q. These various items represented by the various checks and vouchers of the Boulevard Mortgage Company, those reflect,—each of them, transactions I believe you said during the year 1935?

A. I don't remember whether all those are '35 or not?

Q. Well that's my recollection of it. Now those are typical of the method in which you handled various payments for the Boat Seminole, as I understand it?

A. Yes, sir.

Q. And by some bookkeeping entries, ultimately followed by cross entries in various books, and perhaps exchanges of checks, the Boulevard Mortgage Company was through the New York office reimbursed for those various expenditures?

A. Well the New York office a great many times would reimburse this office, if we had some items this office was to be credited for; but that was the clearance account.

Q. It was cleared in that way, sometimes by payments and sometimes by bookkeeping entries perhaps?

A. Well I don't know about that.

Q. Now then with particular reference to this check, Exhibit PP, the check dated March 29, 1935 for \$950. in purchase of this Prigg boat?

A. Yes, sir.

Q. That was charged as I understand it to the Seminole Boat Company?

A. That is right, sir.

Q. And do I understand that the Seminole Boat Company would reimburse the Boulevard Mortgage Company for that amount?

A. The Boulevard Mortgage Company billed the Seminole Boat Company; I presume that the account was cleared out at the end of the year, which was customary. I think the books would show that.

Q. By payments from the stockholders?

A. Yes, sir.

Q. As a matter of fact, any such charge against the Seminole Boat Company and reimbursement, is not reflected by this ledger?

A. Well I couldn't tell you whether it is in that ledger or not. It would be properly charged to the Seminole Boat Company.

Q. Now as a matter of fact, the only entry in this Seminole Boat Company ledger is this unnumbered sheet, wherein under date of June 22nd there is a charge of \$950. under the heading Prigg Cabin Boat. Now can you tell me whether or not there is any other entry in this ledger with respect to that boat?

A. I couldn't tell you without examining it, or without having my bookkeeper examine it.

Mr. Botts:

Let me ask him off the record: \* \* \* If the Court please, in view of what Mr. Underwood has said to me, I think it won't be necessary for me to go into that feature of this any further, because if it is going to come from a witness that knows more about it than Mr. Hawkins, there is no use in attempting to go into it with him.

Q. As a matter of fact, Mr. Hawkins, this Seminole Boat Company matter was just one of the extra duties that was imposed on you without any compensation or reimbursement?

A. I wouldn't say it was imposed on me; I welcomed it.

Q. And you undertook this because it was a matter for the accommodation of these stockholders, first Mr. H. C. Phipps and Mr. J. S. Phipps, and later Mrs. Guest and Mr. Phipps; that is correct?

A. That applies to all the stockholders.

Q. And with respect to this Boat Seminole, as with respect to their other companies, you did exactly what you were instructed to do by the Phipps brothers—or I would put it, the stockholders; that is correct, isn't it?

A. Well no, Mr. Lehmann is the man that is the head of it, our general manager. Most of our instructions came from him.

Q. But as a matter of fact, with reference to this Boat Seminole, didn't you defer entirely to what you ascertained in one way or the other, was the desires of these stockholders?

A. Stockholders; yes, sir.

Q. And their personal wishes with reference to the handling of this boat, were followed by you so far as you could ascertain them?

A. Well yes, of course.



Q. And that was done irrespective of any resolution in the minute books, or instructions from the president or otherwise; isn't that true?

A. Well they never did conflict. The primary purpose was to charter the boat; and at no time would the Phipps people consider using it unless the boat was—no chance of chartering it. Any time that boat could be chartered, that was the purpose of it.

Q. As a matter of fact there never was a charter after 19—As a matter of fact I call your attention to this ledger sheet with respect to charters, and I will ask you if that doesn't show that the last payment on account of a charter was on April first of the year 1930.

A. That's what that shows.

Q. All right, I will ask you, isn't that a fact?

A. I wouldn't want to quote from memory. I don't know how many times it was chartered, or for what, or what was received. We have records to check on that.

Q. Well as a matter of fact, to your knowledge, there was never a charter after the year 1930, was there?

A. Mr. Botts, I don't remember when the last charter was. That is what we keep those records for.

Q. And as I understand it you will produce—

A. Yes, sir.

Q. A list of exactly when the last charters were?

A. Yes, sir.

Q. And a list of the various persons who used it independent of charters?

A. Yes, sir.

Q. That would be the stockholders or their invitees?

A. If you want that.

Mr. Underwood:

If your Honor please, I hesitate to let Mr. Hawkins make that promise, because I have been through the files as far as I could gather them; I have been trying to get such list, and have not been able to do so.



Mr. Botts:

All right, we will leave it, so far as he is able.

Mr. Underwood:

I have two charters here, which are all I have ever been able to find in the files. Now my understanding, if I may be permitted without objection to state my understanding of what actually happened—I can't testify to this; it may refresh Mr. Hawkins' recollection. My understanding is that when Capt. Baker had it, he made the charters himself. The charters did not find any record in the records of the company. He accounted from time to time for the charter hire that he received.

A. That is correct.

Mr. Underwood:

But the charters themselves were made by Baker, under the authority of his contract, and were not made by the company directly, but through Baker.

Mr. Matteson:

Those receipts would show in the books, would they?

Mr. Underwood:

They do show; there are some eight entries of receipts of charter.

Mr. Botts:

But the latest one is April 1st, 1930.

Mr. Underwood:

The latest one I know of.

Q. Now then when you bought this Prigg boat on March 29, 1935 the voucher shows Mr. Scott was in New York at that time, wasn't he?

A. I am not sure; I think he was.

Q. And Mr. Alley was in Palm Beach?

A. See who signed that check and I can tell you.—  
Well then Mr. Alley signed it, and Mr. Scott was in New York.

Q. Mr. Alley was in Palm Beach?

A. Yes, sir.

Q. And you had no directors meeting with respect to this matter?

A. No, sir.

Q. Who then authorized you to expend this sum of money on behalf of the Seminole Boat Company?

A. Well the way it came up, I told you, I saw this little boat which I would like to have had. We needed it for the Seminole to replace this tender that was no good. And Mr. John S. Phipps and his brother were down, they usually came down together. I showed him the boat, told him the price; he told me to buy it; he also would like to have it personally, but would decide on who would buy the boat and who would pay for it; and I think he said he would talk to Amy, who is his sister, and Mrs. Guest, and after I bought the boat he would let me know.

Q. Your authority to buy that boat came from Mr. John S. Phipps, anyway?

A. Yes, sir; I think he consulted his sister or his brother about it. It was four or five days elapsed between the time I first talked about it, and when I finally bought it.

Q. I believe you stated that you also made disbursements on behalf of the Boat Iolanthe, from time to time?

A. From time to time; not a great deal on that boat.

Q. Did the Iolanthe ever stay down here at Miami?

A. I think she did, for a few days at a time, but never for long periods.

Q. And when it was down here, you used your discretion with reference to expenditures for the Iolanthe, didn't you?

A. Not so much as I would on the Seminole.

Q. Well she wasn't down here as much?

A. No, but even then, it was a personal matter, to take it up with them.

Q. As a matter of fact, with reference to this series of expenditures, weren't you in effect instructed by the stockholders to use your discretion about keeping that boat in first-class usable condition?

A. Those first instructions came from Mr. Scott, and the stockholders later confirmed them.

Q. And the stockholders confirmed it?

A. Yes, sir.

Q. You knew of course that Mr. Scott had no personal interest in the boat?

A. Yes, sir.

Q. And that he as you were acting on behalf of the stockholders?

A. Yes, sir.

Q. And when you ordered these various items paid, you knew that you were in fact expending moneys that would be reimbursed from the stockholders?

A. No, because you see, I personally employed Capt. Baker, because he had great hopes of making a lot of money on this boat; he was a friend of mine.

Q. Let's refer to these 1935 vouchers that have been offered in evidence here.

A. But even then he hoped to get a charter for the boat.

Q. But he didn't?

A. No, sir. Business was picking up there again, and larger boats were available.

Q. Independent of the possible contingency of a charter, however, you knew that this money you were ex-

pending was in—from a practical standpoint the money of these two stockholders, didn't you?

A. I didn't think they would repudiate any debts.

Q. You knew that you were in fact spending money that they would pay out?

A. No, I knew it was the Seminole Boat Company debt; I had no knowledge of what they would do about it.

Q. They never had repudiated a debt of the Seminole Boat Company had they?

A. No.

Q. Now I have understood, Mr. Hawkins, that you will examine your records, and if it is fact, confirm your impression that you have a record showing when the ledger and when the other records went to the Palm Beach office?

A. Yes, sir.

Q. And if you find that your memory is correct, and you have such a record, you will produce the same?

A. Yes, sir.

Q. On this trip, the last trip of the Seminole, in which you said you were the guest of the party which went on two different boats, could you recall at this time just what points you visited on that trip?

A. Yes.

Q. You joined the party here at Miami, did you?

A. No, I joined it at Trestle No. 2, Matecumbe.

Q. The boat left—

A. I didn't join the Seminole, I joined the party.

Q. I said, the party. I understand you were on the other boat. But the two boats cruised together, did they not?

A. They did, but the last four or five days I was on the Seminole.

Q. Now the boat proceeded from Miami to Trestle #2 at Matecumbe, where you joined them?

A. Yes, sir.



Q. Then from there, where did you go?

A. I think we went from there to Long Key.

Q. Then from there where did you go?

A. We went to Bahia Honda, and Harbor Key.

Q. Where is Harbor Key?

A. It is about twenty miles west of Bahia Honda.

Q. And then from there?

A. Back to Trestle #2.

Q. That was where the guests and owners left the boat?

A. Yes, sir.

Q. Now then from Trestle #2 the boat came back to Miami and thence to Fort Lauderdale?

A. That is right.

Q. While the boat was at these various points of stoppage, five which you have named, including a stop going and coming at Trestle 2, was the boat anchored—I mean the Seminole, anchored most of the time?

A. Well, yes. We would fish out of these smaller boats.

Q. In other words, the Seminole would be under way until you would reach these various points, and then she would anchor and the small boats would be used for fishing? That was substantially the program, was it not?

A. Yes, sir.

Q. And did you ever see these fishing boats, I believe you said four or five in number,—did you ever see them refuel while you were on that trip?

A. No, sir.

Q. You don't know where they got their gasoline supply?

A. No, sir.

Q. When you were on the Seminole did you ever see them get gasoline, take gasoline off the Seminole?

A. No, sir.



Q. If they did that you simply didn't observe it, is that right?

A. I didn't observe it, because it would be out of my line. I don't know where it would be; I mean I never saw it.

Q. Do you recall approximately the speed under way of the Seminole?

A. No, sir. I don't think she was a very fast or a very slow boat. Very comfortable. I don't remember.

Q. Could you give us an approximation of the number of hours that she was under way after you joined her at Trestle 2, until you left her at that point?

A. I really wouldn't know.

Q. Well now do you know approximately the distance from Trestle 2 to Long Key?

A. I don't know. I think it is about fifteen miles.

Q. A short distance?

A. Not far.

Q. And then from Long Key to Bahia Honda?

A. I would say about—I don't know.

Mr. Underwood:

If your Honor please, I suggest that if these distances are regarded as important, we can get a chart and agree on them. I don't know whether the Seminole went there by the shortest possible route or not.

Q. Do you recall what time of the day you left Long Key?

A. No, sir.

Q. You don't have any recollection at all about those things?

A. I just know it was a very comfortable trip.

Q. Now, so far as these books are concerned, you really don't know anything about how they were kept or when the entries were made? That is a fact?

A. I would tell our head bookkeeper, any charge that goes through there, I would be the one to tell him; but I didn't keep the books physically.

Q. You don't have any idea, about what any of these entries here mean, then, do you?

A. I can figure it out. The bookkeeper could do it much quicker.

Q. Well if the bookkeeper is going to come, then I would rather ask the bookkeeper about those questions. Now I believe you stated that the afternoon of the fire, you had a conversation with Captain Pilkington, in which some mention was made about an attempt to run the generator.

A. That was definitely stated.

Q. I will ask you if you can tell us now where, in relation to the premises up there, that statement was made? Was it inside the house, or outside the house?

A. Inside the house; it was under shelter; whether it was on the porch or in the little office, I don't remember. But there was a little office, that the telephone was on the wall, and some man in uniform was using the telephone.

Q. Now then, did you see Mr. Gary Miller?

A. I don't know Mr. Gary Miller.

Q. You don't know him?

A. No, sir.

Q. Did you see any one that was identified as the County Attorney, up there?

A. I wouldn't know the county attorney.

Q. If you saw him, no one identified him to you? That is what I am getting at?

A. Yes, sir.

Q. And do you recall now who was present at the time that conversation took place?

A. Yes, sir.

Q. Will you please tell us now every one as near as you can, who was present on that occasion?

A. To my knowledge the only one was Capt. Pilkington, Mr. Webber, Mr. Riley, myself, and this man in uniform.

Q. And the man in uniform was using the telephone at the time?

A. Yes, sir; the man in uniform is the man that told me that Captain Abel was still on board the boat, which I didn't know up until that time.

Q. And will you repeat again now, as nearly as you can, the exact statements that were made on that occasion?

A. Yes, sir. I asked Capt. Pilkington how in the world the fire started. He said that he couldn't understand it; that he had been aboard the boat within the last month or so, tried to run the generators, but he couldn't do so for the lack of gasoline. He just couldn't understand how it happened.

Mr. Botts:

That is all I have at this time, if the Court please. Of course when we go over these records I am liable to have some other questions; I don't know. But it seems from what the witness said that most of the questions that I wanted to ask, he would just have to answer "I don't know; somebody else did it"; and so I am not going to clutter up the record with that kind of questions.

The Court:

All right, do you wish to utilize the next twenty minutes with another witness, or would you rather take a recess?

Mr. Underwood:

I understood Mr. Matteson expects to be prepared to go on with his further cross examination in the morning. . . .

(Thereupon the hearing was recessed until ten o'clock a. m. of the following day.)

Miami, Florida, May 10, 1939, 11:00 o'clock A. M.

Morning Session.

1712 Thereupon ROY H. HAWKINS, a witness produced by the Respondent Phipps, resumed the stand and was examined and testified further as follows:

Cross Examination (Continued).

By Mr. Matteson:

Q. Mr. Hawkins, referring to these telegrams that you produced and which were offered in evidence yesterday, I refer you to this one that is marked EE-1, in which it says, "I am depending on you to take out the Seminole after your present charter". That "present charter" referred to there was a charter to Captain Baker's own boat, the Molly-O?

A. Yes.

Q. That doesn't refer in any way to a charter of the Seminole?

A. No.

Q. On whose instructions did you send that telegram?

A. Mr. John S. Phipps.

Q. In other words, Mr. John S. Phipps wanted to make a trip on the Seminole and you were making the arrangements.

A. He and his sister, Mrs. Guest, were making the trip together.

Q. Your instructions came from Mr. John S. Phipps?

A. Yes; he told me that his family and Mrs. Guest and her family were going to take the boat out.



Q. Now, Mr. Hawkins, you have no connection with the Palm Beach Office, have you?

A. Very slightly, sir.

Q. You had no direct connection with them at that time?

A. Only in this respect: occasionally I go to Palm Beach and they ask my opinion about various properties there, values and sales and so on.

Q. Whatever it is, it is only a matter of cooperation; in other words, you have no official connection with it?

A. No, sir.

Q. And no authority over it?

A. No, except that that is also Bessemer Properties, Inc.

Q. That is another office of Bessemer Properties, Inc.?

A. That is right.

Q. A coordinate office with yours?

A. Yes; I consult with them back and forth about a great many things.

Q. You have no jurisdiction or authority over Mr. Riley of the Palm Beach office?

A. Well, I never attempted to assume any.

Q. Well, as a matter of fact, you would not have the right to issue any instructions, of course?

A. I think I might, sir, if there was something involving property and things of that kind, things that the company had an interest in.

Q. You never did?

A. I won't say that; I might have.

Q. You don't recall any circumstances under which you have done anything of that kind?

A. When you say instructions, I might say that we don't usually try to give definite instructions, rather, we make suggestions; I may have said many times, "Jim, I think it would be a good thing for you to do this or that". For a long time I paid Mr. Riley's salary through my



office, and I still pay his office personnel through my office; I am the pay-master for that office.

Q. I would like to ask you this: In your office, Mr. Hawkins, when letters are written it is customary for the initials of the person dictating the letter to appear on the face of the letter, is it not?

A. Yes, sir.

Q. In other words, for instance, I show you this exhibit, Libelants' Exhibit Number 51, which is a letter signed by you with the initials "RHH" down in the left-hand corner; do those initials indicate that you dictated that letter?

A. Yes, sir.

Q. Then referring to Libelants' Exhibit Number 54, the initials "WLW" appear in the lower left-hand corner; I take it that would indicate that that letter was dictated by Mr. Webber, is that right?

A. That is right.

Q. Mr. Webber, in testifying yesterday, stated that he thought this letter was dictated by you, but that was evidently an error, was it not?

A. Well, usually—I couldn't say whether he dictated it or not; I am not sure. He signed it.

Q. It was prepared for his signature?

A. He evidently wrote it and signed it; you could exactly who wrote it by comparing the typewriters.

Q. Now, Mr. Hawkins, I show you this letter of March 20, 1934, Libelants' Exhibit Number 46, addressed to Captain Pilkington and signed by yourself. Did you write that letter?

A. I signed it, yes; the girl wrote it.

Q. The girl wrote it, of course.

A. Yes.

Q. And you dictated it?

A. Yes, sir.

Q. This letter reads: "Dear Captain Pilkington: Will you kindly deliver to Captain Willie Baker the Yacht

Seminole. I would appreciate any assistance you can give him in getting her out immediately. Thanking you, I am Very truly yours, John S. Phipps by Roy H. Hawkins", is that right?

A. Yes. That was probably in error, the "John S. Phipps signature.

Q. You expected Captain Pilkington to recognize the authority of John S. Phipps' signature in that case, did you not?

A. No; mine.

Q. Yours?

A. Yes, sir.

Q. You can't explain it in any other way than an error?

A. It may have been due to a different girl writing it rather than my regular secretary.

The Court:

Let me see that.

Q. Is it possible that that represented your state of mind and feeling that John S. Phipps was the dominating influence with respect to the Seminole?

A. No, sir.

Q. I show you another letter dated December 1, 1933, Libelants' Exhibit No. 51. Did you write that letter?

A. Yes, sir.

Q. Now in this case you wrote to Captain Pilkington with respect to the Yacht Dorothy?

A. Yes, sir.

Q. And you signed this "Palm Beach Company By Roy H. Hawkins"?

A. That is right.

Q. You were not connected with the Palm Beach Company, were you?

A. Well, I had no official title with the Palm Beach Company. As I stated before, I did a little work with the

Palm Beach Company, and it was one of the Florida Companies of the Phipps' interests in Florida. The Yacht Dorothy is owned by Mrs. Guest and is in charge of the Palm Beach office.

Q. In this case you signed that letter "Palm Beach Company"?

A. Yes, sir.

Q. I notice next in this chronological file is a letter, Libelants' Exhibit Number 47, addressed to Pilkington's Boat Yard from Palm Beach, signed "Palm Beach Company", by "J. F. Riley". Do you notice that?

A. Yes, sir.

Q. Then I think there is a letter in here, Libelants' Exhibit Number 52; did you write that one, too?

A. Yes, sir.

Q. And that is addressed to "Pilkington" and signed by your name?

A. Yes, sir.

Q. And over your name appears "Seminole Boat Company"?

A. That is right.

Q. I take it that in that case, as in the other case, what you expected Captain Pilkington to recognize was your signature, "Roy H. Hawkins"; is that right?

A. Yes, sir.

The Court:

Let me see that one.

(By Mr. Matteson):

Q. After all, putting yourself in the position of Captain Pilkington receiving all of these letters with a lot of different corporate names on them, and names of individuals that he recognized, it is quite understandable that there might have been some confusion in his mind—

Mr. Underwood:

I object to that; it calls for the operation of Captain Pilkington's mind.

The Court:

I think that is argumentative, and not in development of any facts. I will sustain the objection.

Q. Now, Mr. Hawkins, I would like to get a picture of the corporate activities of the Seminole Boat Company as reflected by this Minute Book which you have produced here. Following the certificate of incorporation and the by-laws, there appears minutes of the first meeting of the Seminole Boat Company held in Wilmington, Delaware by the incorporators, E. L. Mackey, L. C. Christy and H. Kennedy. Who are they?

A. I don't know.

Q. They are just somebody connected with the Corporation Service Company?

A. I don't know.

Q. Nobody connected with your organization?

A. Not in Miami or Palm Beach.

Q. In any event, they proceeded at once to elect Mr. Scott, Mr. Alley and yourself as directors, and to transfer their subscriptions to you as appears in those minutes; is that right?

A. That is right.

Q. Then the next minutes that appear here are the minutes of the meeting of the Board of Directors at Miami on November 14, 1928 at 10:00 A. M.; yourself, Mr. Alley and Mr. Scott being present; is that right?

A. Yes.

Q. Now the business transacted at that meeting consisted of the election of Mr. Scott as president, Mr. Alley as vice-president and yourself as secretary and treasurer; is that right?



A. Yes, sir.

Q. Then the next item was the authorization to the treasurer to open a bank account with the First National Bank of Miami; is that correct?

A. That is correct.

Q. And the next establishes an office of the corporation at 1317 Biscayne Boulevard, Miami; is that right?

A. That is correct.

Q. Then the corporate seal is adopted and the form of stock certificates; is that right?

A. Yes.

Q. And the issuance of the stock is authorized in a separate item, being item No. 12; is that right?

A. That is right.

Q. And the offices are authorized to file corporate reports, is that right?

A. Yes, sir.

Q. And the principal office of the corporation is designated as being at Wilmington, Delaware?

A. Yes, sir.

Q. And Mr. Graham Magee of 1317 Biscayne Boulevard is appointed counsel?

A. Yes, sir.

Q. And the secretary was authorized to use the corporate seal?

A. Yes, sir.

Q. And that is all the business that was transacted at this meeting?

A. That is all that appears in the minutes.

Q. Now the next minute is a meeting of the Board of Directors of the company held in Miami on January 28, 1929, and yourself and Mr. Scott and Mr. Alley being present.

A. Yes.

Q. The president reported the purchase of the gasoline Yacht Seminole.



A. That is right.

Q. A resolution was adopted authorizing the purchase for a consideration payable in the capital stock of the corporation?

A. That is right.

Q. That is all of the business that was transacted at that meeting?

A. That is right.

Q. Then there was a special meeting of the Board of Directors held October 21, 1929 with yourself, Mr. Scott and Mr. Alley being present, and the president brought up for consideration the matter of his contract with Mr. Baker?

A. That is right.

Q. And the contract was incorporated in the minutes and a resolution was adopted authorizing the officers to enter into that contract?

A. That is right.

Q. And that is all the business that was transacted then?

A. Yes.

Q. Then the next minute was the annual meeting of the stockholders held January 26, 1931, and the only business transacted was the election of directors, Mr. Scott, yourself and Mr. Alley?

A. That is right.

Q. Then the next minute is the annual meeting of the Board of Directors of the same day, an hour later, at which you three were present, and the only business transacted was the re-election of the same officers of the corporation?

A. That is correct.

Q. The next minute is the annual meeting of the stockholders held on January 25, 1932, at 10:00 A. M., and the only business was the election of these directors as previously—

A. That is correct.

Q. And the next minute is the annual meeting of the board of directors held at 11:00 o'clock on the same day, when the same three directors were present, and the only business was the re-election of the same officers of the corporation, is that right?

A. That is correct.

Q. The next minute is the annual meeting of stockholders on January 30, 1933, and the only business transacted was the re-election of the directors previously named, is that right?

A. That is correct.

Q. Now the next minute is the annual meeting of the Board of Directors immediately following, an hour later, at which two directors were present, Mr. Alley and Mr. Hawkins, and the only business transacted was the re-election of the officers that previously held office, is that right?

A. That is right.

Q. Then there was a special meeting of the Board of Directors held on October 9, 1933 and yourself and Mr. Alley alone being present, and a resolution was adopted changing the corporate agent of the corporation at Wilmington from Corporation Service Company to the Delaware Registration Trust Company?

A. Yes.

Q. And that is the only business that was transacted in that meeting?

A. Yes.

Q. Then the next meeting is the annual meeting of the stockholders held January 22, 1934, at which the only business transacted was the election of yourself, Mr. Scott and Mr. Alley as directors?

A. That is correct.

Q. The next minute is the annual meeting of the Board of Directors immediately following, at which Mr.

Scott, Mr. Alley and yourself were present, and the only business transacted was the re-election of the previous officers, is that right?

A. Yes, sir.

Q. The next minute is the annual meeting of stockholders held on January 28, 1935, and the only business transacted was the re-election of the directors that previously held office?

A. That is right.

Q. And the next meeting is the annual meeting of the Board of Directors held on January 28, 1935, the three directors being present, and the only business transacted being the re-election of Mr. Scott, Mr. Alley and yourself to the offices that you previously held, is that right?

A. Yes.

Q. And that is the last meeting that was held of stockholders or directors of the Seminole Boat Company?

A. Yes, sir.

Q. Now, Mr. Hawkins, you have been secretary and treasurer of the Seminole Boat Company from the first meeting of the company down to the present time, is that right?

A. Yes.

Q. As secretary and treasurer it has been your duty to keep the accounts and funds and records of the corporation?

A. They were kept under my direction, yes.

Q. I asked you yesterday about this account book, and I believe you said something about it being sent up to Palm Beach, and I asked you when that was done.

A. Yes.

Q. Can you tell us now?

A. Yes.

Q. When was that done?

A. In 1934. I have a memorandum here which will give you the date; it was on January 30, 1934, at the

time when the balance sheet was sent in connection with the company. The book was taken to Palm Beach by our Mr. Clark, a lawyer for Bessemer Properties. The accountant in my office thought it would be easier to keep the records in Palm Beach, as the boat was there then.

Mr. Underwood:

If your Honor please, I offer in evidence now, since Mr. Matteson read this communication, letter of January 30, 1934 from Mr. Handley to Mr. Alley, and the two documents attached thereto, one of which is a copy of a letter from Mr. Handley to Mr. LeCount, dated the same date, and the other two sheets are entitled "Balance Sheet, Seminole Boat Co., Miami, Florida, December 31, 1933".

Mr. Matteson:

I object to them, if your Honor please, as being self-serving declarations. The testimony of the witness stands by itself without any documents being necessary.

The Court:

Let me see it.

Mr. Botts:

If the Court please, in behalf of the Respondent Pilkington I object to these documents on the ground that they are immaterial and irrelevant. The sole question was the date when certain books were delivered, and the witness has answered that question. These documents serve no useful purpose, and are merely unsworn statements without any probative value. I do not think there is any use of encumbering the record with them.

The Court:

Well, it shows how the matter was handled and the conduct of the affairs of the Seminole Boat Company. I think they are all right. I will overrule the objection.

(Thereupon the documents above referred to were marked Respondent Phipps' Exhibits 3-L-1, 3-L-2 and 3-L-3, respectively.)

(By Mr. Matteson):

Q. Referring to this account book again, I want to go over the high-lights—

A. You understand that I didn't keep this book?

Q. It was kept under your supervision, however?

A. That is right.

Q. The first account in the ledger appears to be the account of the First National Bank which, I take it, is the bank deposit account?

A. Let me see what all of this is.

Q. The first section there, I take it, is the Journal.

A. That seems to be correct, sir.

Q. And this—

A. Wait a minute; what is that?

Q. That is all part of the same account, consisting of three pages?

A. That is right.

Q. And this account was balanced out on June 2, 1931, is that right?

A. That is right.

Q. And since June 2, 1931 the Seminole Boat Company has had no bank account

A. That is correct.

Q. I refer you to this page in the letter headed by the name of W. P. Baker, and it shows certain debits and credits to W. P. Baker. I take it those were payments under the contract arrangement that you made with him; is that right?

A. I presume they were, sir. The only thing I looked at was the balance sheet at the end of the month or the six months, or the end of the year; I never looked at those books.



Q. Well, you are responsible for these books?

A. I have men under me that are responsible for the keeping of them.

Q. But you mean to say you never even looked at them and saw them, or aren't familiar with them at all?

A. I never kept any of these books, but I have an accounting department that does; and every month they give me statements of each company, each account, delinquents, receipts and everything. No bills were incurred when I had charge of the boat unless I approved them.

Q. Now let me ask you about this; this seems to show that in 1929 there were certain payments to Mr. Baker, and that the final payment was on September 18, 1929, \$250; is that right?

A. It looks like it.

Q. Was that contract ever renewed?

A. Yes, sir, I think it was; I am not sure, I believe we have a renewal of it.

Q. The contract was for one year, was it not?

A. I think it was renewed; I am not positive about it.

Q. When we went over the Minutes together a few minutes ago there was not any authorization of it in the Minutes?

A. No, there was not. I don't know whether the contract automatically carried a renewal or not; you would have to read that.

Q. Then I find three pages here showing,—headed "Mrs. F. E. Guest, Henry C. Phipps, John S. Phipps" at—

A. Yes, sir.

Q. I take it that these show the debits and credits on the books of the Seminole Boat Company to those individuals?

A. Yes, sir.

Q. I see that on June 22nd, 1935, Mrs. Guest was credited with a payment of \$1224.90.

A. Yes, sir.

Q. I believe that that was a payment of one half of the share of the general expenses of the Seminole between June 1st and April 30th, 1935, was it not?

A. The voucher would show that, I wouldn't know.

Q. All right. We can check that. In any event it does show payments by her to the Seminole Boat Company of that amount?

A. That is correct.

Q. Credited as of that date. Now passing to Henry C. Phipps, there are various credits over a period of years to the company aggregating \$122,440.72; is that right?

A. Yes, sir.

Q. That represents the amount of cash paid in to the company by Mr. Phipps during that period; is that right?

A. Yes, sir.

Q. Then passing to the account of John S. Phipps, it shows a total of contributions by him of \$13,665.63, is that right?

A. Yes, sir.

Mr. Underwood:

Can we agree at this point that the total of J. S. Phipps' contributions down to that date, was the same as the combined total of H. C. Phipps and Mrs. Guest?

Mr. Matteson:

Well, I am just taking it as the books show. We can add it together, that may be right. I am reading what the books show.

Mr. Underwood:

It is simply arithmetic to show that.

Mr. Matteson:

I assume you are right.

Mr. Underwood:

Do you mind if we ask the witness that question at this point. May I interpolate that question: Mr. Hawkins, will you add up the payments made by Mrs. Guest and Mr. H. C. Phipps and tell me whether or not they are equal to the total payments by John S. Phipps? What is the combined total paid by Mr. H. C. Phipps and Mrs. F. E. Guest?

A. \$13,665.62.

Mr. Underwood:

And what is the total by Mr. J. S. Phipps?

A. \$13,665.63.

Mr. Underwood:

A difference of one penny; is that right?

A. That is right.

Q. Now I go to a page here that is headed, Palm Beach Company, now the Bessemer Properties, Inc., 1937 on. Is that right?

A. Yes, sir.

Q. This apparently represents advances by that company; is that right?

A. I don't know what it represents.

Q. Well, it shows the account balanced out on June 22, 1935, does it not?

A. Yes, sir.

Q. Now from that time on there is an aggregate of advances by the Palm Beach Company and the Bessemer Properties, Inc., of \$13,879.36, is that right?

A. Yes, sir.

Q. And that is outstanding now as a debit against the Seminole Boat Company in favor of the Palm Beach Company?

A. I couldn't say that; I would have to have the book-keeper make up a statement.

Q. Well, your company has never reimbursed the Palm Beach Company or the Bessemer Properties, Inc. for any of this expense, has it?

A. I say I would have to have the bookkeeper advise me on that and check it.

Q. And you as the treasurer of the company can't tell us that?

A. No, sir, I would have to have him check his books and give me a statement. Apparently that is correct; but as I say, I am not the bookkeeper.

Q. You say apparently that is correct?

A. I think that we have general statements that show you the profit and loss for the period.

Q. Well, we will just pass on to the next item. Now there is an account here headed Boulevard Mortgage Company, that seems to have been balanced out at the end of 1933, is that right?

A. That is right.

Q. No further credits with respect to that.

A. Apparently not.

Q. Now we come to the profit and loss surplus account; we have entries running from 1928 down to 1937, showing a total debits, as loss of the company, of \$68,945.61, is that right?

A. Yes, sir.

Q. Over a period of December 31, 1928 to December 31, 1937?

A. That is right.

Q. Now you think that may include depreciation?

A. I don't know; it seems like a large figure.

Q. And what depreciation was charged on the Seminole? \$2,000, is that right?

A. It would show on the books; I don't know what it is.

Q. You think there are entries indicating that \$2,000 would be the amount?

A. Yes.

Q. If that is the amount over a period of even assuming it is ten years, at that rate there would be \$20,000, and if you deducted that much we would still have a loss of \$48,945.00?

A. Yes, sir.

Q. And it is true that every single entry in this profit and loss statement is an entry of a loss?

A. Well, you would have to check each one of them to find out.

Q. They are all on the same side of the ledger, aren't they?

A. Yes, sir.

Q. There are none on the credit side?

A. No.

Q. Now here is a page on the charter of the Seminole; now it seems to indicate that the last credit with respect to a charter of the Seminole was on April 1st, 1930, and was \$600.; is that right?

A. Yes, sir.

Q. There has been no income from any charter of the Seminole since that time?

A. Not to my knowledge.

Q. I pause a minute to point out an entry with respect to commission on charter, \$350. on April 17, 1929; is that right?

A. Yes, sir.

Q. Here is the page of depreciation on Seminole, and you have, let's see: You have a total of \$10,333.32 charged to depreciation; is that right?

A. Yes, sir.

Mr. Underwood:

That is through 1934.



A. That is through '34, yes, sir.

Q. I don't suppose you have been charging depreciation on the Seminole since 1935, have you?

A. I hope not. It is an expense.

Q. Now, here we come to a page, medical expense; Seminole fire.

A. Yes, sir.

Q. And I take it these are expenses in connection with Mr. Thomas' injuries?

A. They seem to be so.

Q. In 1935, you have a total of \$2378.43, and the account balanced at that time; is that right?

A. Yes, sir.

Q. Then in 1936, you have a total of \$2854.25 more, and the account balanced at that time; is that right?

A. That is correct.

Q. And in the year 1937, you have items totaling \$988.

A. That is correct.

Q. And in the year 1938 items aggregating \$900?

A. Yes, sir.

Q. Now then you come to a sundry item which shows items of expense during the year 1935 aggregating \$540.99, is that right?

A. That is correct, sir.

Q. And the account balanced at that time?

A. Yes, sir.

Q. And then in 1936 you have items aggregating \$5,023.94?

A. Yes, sir.

Q. And \$5,000 of that amount represents a payment to Mrs. R. C. Abel, is that right?

A. That is correct, sir.

Q. And \$21.90 represents payment in connection with the estate of R. C. Abel?

A. Where do you see that?

Q. Here.

A. Yes, sir.

Q. And an additional amount in 1937, bond of Mrs. Abel, \$10.

A. Yes, sir.

Q. Well now, Mr. Underwood asks me to ask you with respect to the item, bond, Mrs. Abel, \$10., and item fees Abel estate, \$11.90; if you can tell us what the purpose of those items was.

A. I couldn't quote from memory, I would have to look on the check vouchers.

Q. Was any suit ever brought by Mrs. Abel against Seminole Boat Company?

A. Not to my knowledge, sir.

The Corut:

Did you ask him about that \$5,000 item?

Mr. Matteson:

I was going to ask him some more about that.

Q. Do you know anything about the payment of \$5,000 to Mrs. Abel?

A. I know that it was paid; Mr. Alley, the senior officer of the company in Florida, told me that he was going to pay it.

Q. That situation, as I see it from the books, is this: The Seminole was destroyed on June 24, 1935.

A. Yes, sir.

Q. And she was practically the sole asset of the Seminole Boat Company at that time?

A. That is correct, sir.

Q. And even at that time there was outstanding on the books of the company something over two thousand dollars of expenses which had been incurred by one or more of these corporations that advanced money for you?

A. I don't know the exact figure, but the books will show that.

Q. Well, I think we noted that Mrs. Guest paid something like \$1200.

A. Yes, sir.

Q. —subsequent to that time. So the total would have been somewhere between two thousand and twenty-five hundred, outstanding liabilities at the time of the loss; is that right?

A. Well, the books show the liability at that time; I wouldn't want to quote the amount.

Q. And since that time there have been incurred additional expenses aggregating some thirteen thousand dollars?

A. I don't know what the figure is; there have been additional expenses.

Q. Mr. Underwood called my attention to the fact that the credit entries seem to indicate that the twenty-four hundred dollars that I had in mind was credited to the stockholders as paid on June 22, 1935, two days before the fire.

A. Yes, sir.

Q. Now I think that there were at least some outstanding liabilities of the company in addition to that, at that time; is that right?

A. The books show that; I wouldn't quote from memory.

Q. And we noted yesterday, I think, the fact that under the corporation charter the stock is not accessible, and the private property of the stockholders is not subject to liability for the liability of the debts of the corporation; that is right, is it?

A. Yes, sir.

Q. Well, did I understand from what you said that you had nothing to do with the payment of the \$5,000 to Mrs. Abel?

A. I didn't say I had nothing to do with it, I said that I know Mr. Alley, the senior officer of the company in Florida, told me that he was going to pay it.

Q. By senior officer you mean that he was the vice president?

A. He was the vice president; Mr. Scott being out of the state.

Q. Well, you know no more about it than that?

A. He told me he had talked to the stockholders.

Q. But I mean, you know nothing about it except what Mr. Alley has told you?

A. That is all.

Q. And with respect to this substantial amount that was paid out here for the account of Mr. Abel—

Q. Did you have anything more to do with that than you have with respect to the payment of Mrs. Abel?—did I say Abel? I should have said Thomas there.

A. The five thousand to Mrs. Abel.

Q. Perhaps you better strike that out, I might have made a mistake: With respect to these substantial payments that were made to or for the account of John Thomas—

A. Yes, sir.

Q. Did you have anything more to do with them than you did with the payment for the account of Mrs. Abel?

A. Mr. Alley told me that he was incurring those expenses.

Q. That is all there was to it; he simply told you that he was doing it?

A. Yes, sir.

Q. And there was no authorization of the expenditure of any such amount incorporated in any resolution of the Board of Directors, was there?

A. No, sir.

Q. I think you said Mr. Alley said that he was doing it with the consent of the stockholders?

A. He told me that he had talked to the stockholders, yes, sir.

Q. Well, that would certainly be a thing that would require the authority of the stockholders under those circumstances, wouldn't it?

A. I presume so, sir.

Q. Now you produced a list of vouchers here yesterday representing payments from your office in relation to expenses of the Seminole?

A. Yes, sir.

Q. And I think they ran down to perhaps June, 1935. Do they represent the last payments that were made by your office? I mean, are there any other subsequent to these that you have produced?

A. Not to my knowledge, I think that is all of them,—no, I beg your pardon; we have been paying through my office, we have been paying the storage on the Seminole,—the hull.

Q. Out at Nuta's yard?

A. Yes, sir.

Q. Then you are still incurring expense for the storage?

A. Storage.

Q. Now I want to get back to the transfer of this account; it was your duty as an officer of the corporation, to keep these accounts, or have someone keep them under your supervision, wasn't it?

A. To see that they were kept, yes, sir.

Q. And the by-laws provide, Section 27, "The books, accounts and records of the corporation may be kept in any office of the corporation within or without the State of Delaware and shall be open to inspection by the stockholders at such times, and subject to such regulations, as the Board of Directors may prescribe."

A. Yes, sir.



Q. And we noted a little while ago action by the Board of Directors at the first meeting, establishing an office at 1317 Biscayne Boulevard?

A. That is right.

Q. And according to our analysis of the Minute book, no other office was ever designated for the Seminole Boat Company, was there?

A. Why I would have to check through there and find out whether it was. I don't recall that it was.

Q. Then as I understand your testimony, in January, 1934, the books of the company were transferred from your office to the Palm Beach office?

A. Mr. Alley, who was the vice president of the company.

Q. And thereafter they were no longer subject to your jurisdiction?

A. I go to the Palm Beach office quite regularly, sir. I don't keep books in either office.

Q. But they were out of your custody; this office is the office that you are in charge of, isn't it?

A. Yes, sir.

Q. And that is the only office that you are in charge of?

A. I tell you, I go to the Palm Beach office quite frequently.

Q. Of course you do, but I say, it is the only office that you are in charge of.

A. Yes, sir.

Q. Then from the time of the transfer to the Palm Beach office there was no—where did you get the authority to transfer the books there, that it was your duty as an officer of the corporation to keep, to another office, that was not an office of the Seminole Boat Company?

A. Mr. Alley, the vice president of the company.

Q. You did that just because he told you to do it, is that right?

A. Yes, sir, with my consent; I saw no objection to it.

Q. There was no action by the Board of Directors authorizing any such act, was there?

A. We were the only two directors in the state, at the time.

Q. So you felt nobody could object, is that it?

A. That is right, sir.

Q. But there was no formal authority of any kind for that, was there?

A. Nothing placed in the Minutes, no, sir.

Q. I would like to ask you to give us as specifically as possible just when Mr. Scott left the Miami office and you succeeded to the authority there.

A. That would be a guess on my part.

Q. Well, I think you said it was about the spring of 1934, was it?

A. I believe it was, yes, sir.

Q. Do you remember anything about the circumstances of his leaving? I mean, what passed between you, just how it came about?

A. It was one of those gradual things; he had been going up there every summer for a number of years, until he finally told me he was going to the New York office permanently, and moving. Even when Mr. Scott was in the New York office I would always correspond with Mr. Scott about matters pertaining to the Miami office.

Q. Then since the time of his departure, except for such correspondence, he hasn't had any direct connection with the Miami office?

A. Well, he has been more or less in charge of the Miami office, while he is in New York; that is, all business that I have in the Miami office, I would take up through Mr. Scott in the New York office.

Q. I see. There was no formal delegation of your duties as treasurer—secretary, to Mr. Alley or anyone else in Palm Beach, was there?

A. I don't exactly know what you mean by that.

Q. I mean, there is no resolution of the Board of Directors, or any action appearing on the corporate records?

A. Of the Seminole Boat Company?

Q. Yes.

A. That it was—

Q. That your functions were transferred or delegated to Mr. Alley or anyone else in Palm Beach?

A. No.

Q. There is no record of any authorization of the Board of Directors for the officers of the corporation, either to obtain or accept advances from the Boulevard Mortgage Company or any other of these corporations that advanced money, was there?

A. No, sir.

Q. Neither was there any authorization of repayment?

A. No, sir.

Q. Nor any assessment of stockholders?

A. No, there was not.

Q. Nor any authorization of any requests upon stockholders for payment of money?

A. No, sir.

Q. The whole thing, I take it, was handled in a purely informal manner?

A. No, the books of the company were kept in good order; the affairs of the company were run in good order.

Q. I would like to ask you about these vouchers. You were testifying yesterday about relations with Mr. Bernard; I think you introduced this voucher showing the payment to Mr. Bernard,—Exhibit UU.

A. Yes, sir.

Q. This statement is for examination of the vessel on dry-dock and afloat on March 26th and 27th, 1935?

A. That is right, sir.

Q. And had he made some examination of the boat before that?

A. I think he had, years before, but I didn't know.

Q. I mean, in that year.

A. No, sir.

Q. When was the reinforcement put on the plate in the stern of the Seminole? Was that before or after she was dry-docked?

A. Two days after she was taken off the dry-dock.

Q. Then the total amount that you paid to Mr. Bernard for this survey was \$17.50?

A. He said he didn't want anything else, as the other repairs were minor.

Q. And you said you asked him for a valuation too?

A. Yes, sir.

Q. Did this cover that?

A. Yes, sir.

Q. Now, just a matter of detail here, I would like to ask about; on this blue sheet attached to this check, which I take it you call the voucher, do you?

A. Yes, sir.

Q. I notice that the word, "Charge Seminole Boat Company" on that sheet, are apparently original writing by a typewriter, while the balance of the sheet is carbon. Is there some detail of your office system that explains that?

A. In all probability the check was written and I told them to charge it, because I initialed it. It is billed the Yacht Seminole and owners, and I initialed that.

Q. Well, wasn't—that wasn't the point that I was getting at. This blue sheet is a carbon of the original check; the original check is in two parts, is it not?

A. That is right.

Q. And the part above the check part contains a description of the item, with respect to which the payment of the check is given; is that right?

A. That is correct, sir.

Q. Now I take it that all of this that appears to have been transferred to the blue sheet by carbon paper, would appear on the original check?

A. Yes, sir.

Q. Now I note that the words "Charge Seminole Boat Company" here, are apparently in original typewriting.

A. No, the word "Charge" is not; Seminole Boat Company is. In all probability the girl might have written the check and said "How do you charge it?" And I said "Seminole Boat Company."

Q. Well, perhaps I am more familiar with your office system than you are about that, Mr. Hawkins. Isn't it a fact that wherever there is a charge with respect to the item which is described in the upper half of the check, it is never put on the check itself?

A. No, not on the check itself. It is on the voucher.

Q. Yes; so that even if we had the upper half of this check here, the words "Charge Seminole Boat Company" would not appear on it.

A. They would appear on the voucher.

Q. They would appear on the voucher, but not on the upper half of the check?

A. No.

Q. And that is the regular routine of your office, is it not?

A. That is right.

Q. Well, then, the point I get at is this: That whoever got this check would know that it was the Boulevard Mortgage Company check?

A. That is right.

Q. And would know that it was a payment of a certain amount, but they could not know who was the party that was really paying that.

A. Well, Mr. Bernard did.

Q. Well, I am just talking about, as far as appears on the face of the document.



A. Of course his bill, he would know, because he billed the Yacht Seminole.

Q. But there is nothing on the—

A. On the check, to say, Seminole Boat Company.

Q. Yes.

A. No, there isn't.

Q. That would be true of any check that went out; the indication of the charge would not be on the document that left the office?

A. That is not correct; if they got the check at the office, we make them sign the voucher. That was evidently mailed to them.

Q. That would be the only feature, if they came to the office and got it?

A. Then he would sign the voucher.

Q. And it would depend on whether he took the trouble to compare it with the check that he received?

A. I am not so sure, but I think on some of the checks we had the part up here, that shows the charge; you see there has been a part torn off.

Q. Yes, I have one here with that part on.

A. Yes, there is one.

Q. This one that you refer to is Exhibit 3-J?

A. That is right, sir.

Q. It just happens that on that one there isn't any charge, either on the original or the blue sheet.

A. That is right.

Q. So that doesn't help us on the particular thing we are discussing.

A. But it would be usually right here, charge Seminole Boat Company.

Q. Now getting back to Exhibit UU again, we unfortunately in this case do not have the upper half of the check.

A. Yes, sir.

Q. But it is clear, is it not, that Seminole Boat Company was written in original typewriting on the copy?

A. Yes, sir.

Q. So that it would have on the upper half of the check, which of course is missing—

A. Yes, sir.

Q. And isn't it a fact that that was your office routine?

A. No.

Q. You say it wasn't?

A. Not to write it on the copy; we would write it on the original.

Q. Now referring to Exhibit 3-I, on this one I note that the charge is in carbon too, but in a carbon of a different impression from the balance of the blue voucher. You notice that, don't you?

A. Yes, sir.

Q. These are made in duplicate, are they not?

A. Checks?

Q. Checks.

A. No.

Q. Checks and vouchers?

A. No. The vouchers,—I think we made two vouchers, I am not sure.

Q. This one, number 3-A, is the order of Biscayne Boulevard Company.

A. Yes, sir.

Q. And what I have said does not apply to an inter-company check; I am talking about checks that were outside of the company.

A. The charge is on there.

Q. Yes, it is; it is an inter-company check. Now that one—

A. That shows you.

Mr. Underwood:

That is Exhibit XX; the charge does appear, is that right?

Mr. Matteson:

Yes, sir.

A. That is right, sir; so does that one.

Mr. Underwood:

Indicating Exhibit RR.

A. No, I tell you, one thing I do in my office, I approve all the bills before I sign the checks.

Q. Well now, here is one that illustrates what I have in mind; this is VV.

A. Yes, sir.

Q. Now there the charge is in original typing.

A. That is right.

Q. On the carbon, isn't it?

A. That is right.

Q. So it wouldn't appear in the original?

A. But it is evidently copied on the other part of the voucher. The girl may have made two typings of it. There you are, "Charge Seminole Boat Company." You will find the majority of them, the charge is just like I told you.

Mr. Underwood:

That is Exhibit OO.

Q. Well—

A. There you are, that is, Charge Seminole Boat Company; the girl may have put it in her machine twice.

Mr. Underwood:

Referring to Exhibit SS.

A. The majority of these are this way, Charge Seminole Boat Company. I am the one that usually tells

them how to charge it, and I initial it. See here, on that bill there was some question about it, I wrote there, "Charge Seminole Boat Company." Nobody else can duplicate that.

Q. Well, I want to get this off system correctly.

A. Yes, sir.

Q. Then I understand that your testimony is that in every case of a voucher check issued in your office—

A. Yes, sir.

Q. —the charge should appear, if everything is done in normal manner, in original typewriting on the upper half of the check, and the carbon on the voucher?

A. Unless there is some question about the charge, and I may tell them I will have—write the check and I will tell you how to charge it. That happens sometimes.

Q. Now I think either you have testified or it is in the answers to interrogatories, that when one of the stockholders made trips, the operating expenses of that trip were charged to the stockholders; is that right?

A. No, sir.

Q. How about that?

A. I don't know that that was ever done, sir, except possibly on the last trip.

Q. Well, I call your attention to this voucher here, which appears to have been for groceries on the last trip.

A. Yes, sir.

Q. And was charged to Mr. John S. Phipps.

A. That is right.

Q. Now why was that charged to Mr. John S. Phipps?

A. Because he personally incurred this expense at No-Name Lodge. I didn't know anything about the bill, and I sent it to Mr. Riley in Palm Beach, to have him approve it. I had some correspondence about it.

Q. Then wasn't that handled so with respect to that trip, that the groceries and items of that kind were charged to Mr. John S. Phipps?

A. I understand it was done later; not the first charges. I charged to Seminole Boat Company.

Q. Not the first charges. When a voucher came in that had a number of different items on it, who would determine the distribution of those charges?

A. Usually I did.

Q. I take it there would be some cases where the items would have to be split up?

A. That is right, sir.

Q. As I understand it now from you, the major part at least, of the operating expenses of the Seminole on this last trip, including such things as crew, gasoline groceries, things of that kind, were charged to the Seminole Boat Company?

A. First charged to the Seminole Boat, but Mr. Phipps had told me when he made this last trip, and invited me to go along, and his sister was going along, inasmuch as she was a new stockholder, and he had mentioned to me that he wanted it to be his treat. I had no specific instructions not to charge it otherwise. You will find one bill in there for groceries that I didn't put the charge on, because I didn't know how it was to be charged; but for the crew, I charged the Seminole Boat Company. That later was changed, I understand; I had nothing to do with the change.

Q. And such items as guides and guide boats, were also charged to the Seminole Boat Company, weren't they?

A. I believe there was only one guide boat, and that was Captain Baker's.

Q. And that expense was charged to the Seminole Boat Company, was it not?

A. I think in the first instance it was, yes, sir. I had no specific instructions to the contrary.

Q. And I think one of these vouchers shows an item of "Tips to the crew" charged to Seminole Boat Company; do you recall that one?



A. I don't recall it, there probably is; but the last party Mr. Phipps wanted for his treat.

Q. And I think this item of 1500 gallons of gasoline for the trip was charged to the Seminole Boat Company; do you recall that one?

A. I think that is correct, yes, sir.

Q. Now do I understand from you that this is the way it was generally done, items of this type were charged to the Seminole Boat Company?

A. What is the way it was generally done?

Q. The way it was done on this occasion; you said you charged all these things to the Seminole Boat Company because you had no specific instructions to do anything else. Now I am asking you if on several occasions when the stockholders made trips on the boat, you did it the same way?

A. I always charged all expenses to the Seminole Boat Company, unless I was told to the contrary. If I was doubtful about a charge, I would hold it up until I found out.

Q. Do you recall ever receiving instructions on any occasion to do anything different than that?

A. No, sir, I didn't. There was some question, as I stated, about the actual expenses of the last trip,—not the maintenance of the boat; the expenses of the crew, and the groceries.

Q. Now one more thing I want to ask you; it seems as if we ought to be able to get from your records. During the years of the existence of the Seminole, can you tell us exactly how the Seminole was utilized in each year? How long she was laid up, how long she was used by the stockholder or anyone else; so that we can have a schedule of the use that was made of the Seminole.

A. Well, I wouldn't want to quote that from memory. Captain Baker I think had the boat the first two years, and kept it at the Loyal Palm Dock, excepting when he

was out on charter. To my knowledge she was not used after '31 or '32, by anyone except possibly there might have been a trip in '34; I am not sure as to that.

Q. There was one summer when she went north, wasn't there?

A. I think she went north, but I don't remember what year. That was all in the log of the boat, that was destroyed in the fire.

Q. Mr. Batchelor tells me that you were telling us something about the use of the boat by the stockholders and I interrupted you. Do you recall what that was?

A. No, sir, I don't.

Q. I would like to ask you another thing with respect to the keys, that you say you received from Captain Baker.

A. Yes, sir.

Q. How long were those keys in your possession, do you recall?

A. I don't remember. It was a very short time. I think it was a day or two.

Q. Well, they were in your possession and then you gave them to Mr. Webber to make a trip with them?

A. That is right.

Q. And then he brought them back here?

A. That is correct, sir.

Q. And sometime after that, Mr. Webber sent some keys back to Captain Pilkington?

A. The day after, or that same afternoon, he told me Captain Pilkington wanted the keys so he could air out the boat, keep it clean.

Q. Now I think you testified about the bringing back of various supplies and trophies and silverware and so forth from the Seminole, and about your fixing a place for storage of them down at your office.

A. Yes, sir; they are there now.

Q. Well, was it because of the contemplated sale of the Seminole that you decided to remove all these things and store them down there?

A. No, sir; Captain Baker had advised me that some of the linens molded, due to the lack of moth balls and so forth; and he suggested we put them in a cedar chest.

Q. And the silverware and the trophies, and the linens, had always remained on the boat before, had they not?

A. I don't know that. I think that the linens had been on the boat most of the time.

Q. And the silverware and trophies?

A. I don't know about them, sir.

Q. As far as you know, they had? You don't know anything to the contrary?

A. I didn't know anything to the contrary, no, sir.

Q. What were the trophies?

A. Oh there were some cups from polo tournaments and things of that kind.

Q. Personal effects of members of the Phipps family, is that right?

A. Yes, sir. There were some on there I don't believe belonged to them.

Q. And it was about that time that you were considering a possible sale of the Seminole, was it not?

A. No, the sale idea was over then, because the sale had been refused, and Mrs. Guest had bought Mr. H. C.'s interest, and the boat was not then being offered for sale.

Q. As a matter of fact, this boat had been continuously offered for sale since 1928 or 1929, hadn't she? Listed with the various brokers?

A. I don't think she was offered for sale during the first two years that Captain Baker operated her as a charter boat. That is when he kept her at the Royal Palm Docks.

Q. Isn't it a fact that she was listed with Henry J. Gielow, Inc. of New York City in 1929, at a sale price of \$75,000 and a charter rate of \$7500 per month?

A. I don't know that to be a fact.

Q. Isn't it a fact that she was listed with the same concern for sale in 1935 at a price of \$5,000?

A. I don't know that to be a fact, and I doubt that that is true. I never listed it with any New York firm when I offered it for sale, and not at any time at any specific price.

Q. I think you mentioned an auditor in New York by the name of C. A. Weiss, and I think you have stated that some of the charges on the books were made by the authority of statements forwarded by him; is that correct?

A. Now what was the statement I was supposed to have made?

(The question was read.)

A. That is correct; that was sometime after the last trip.

Q. Well, who is Mr. C. A. Weiss?

A. He is the chief accountant in the New York office.

Q. When you say New York office, what office do you mean?

A. I mean 457 East 57th Street.

Q. Henry Phipps estate?

A. That is the Henry Phipps estate and affiliated companies.

Q. Then you accept that as a basis of making charges in the books of the Seminole Boat Company, because he is the auditor of the Henry Phipps estate?

A. Yes, sir, he is the auditor and he was there with Mr. Scott, who was the president of the company, and the two stockholders.

Q. I want to take an item more or less at random so we can get the system that is followed here in this book; keeping system of yours. Now look at voucher number 52 dated June 25, 1931, items aggregating \$541.50, for repairs, maintenance, storage and wages on the Seminole. Then there appears on this voucher the following statement; "To record liability to the B. M. Company"—that is the Boulevard Mortgage Company I believe.

A. Yes, sir.

Q. "For various expenses paid through the New York office for account of Boulevard Mortgage Company; see Boulevard Mortgage Company journal voucher number 350, recording asset from Seminole Boat Company and liability to Phipps Realty Company. For details of these charges furnished by New York office see Boulevard Mortgage Company bookkeeping file statement of Boulevard Mortgage Company in account with Phipps Realty Co. for month of May, 1931."

A. That is what it says.

Q. Is that the way it is done?

A. That is the way it is said.

Q. It is kind of complicated, isn't it?

A. Most bookkeeping is very complicated. And here are the initials of the man that made the entry, and there is the chief auditor's approval.

Q. Now that item would be in the journal account, would it not?

A. Yes, sir, general voucher 350.

Q. Well, that is Boulevard Mortgage Company 350, isn't it?

A. Yes, sir, Boulevard Mortgage Company, journal voucher 350.

Q. Then on the authority of this voucher, it is entered here in the—

(Discussion was had.)



That was transferred as a credit to the Boulevard Mortgage Company on the page headed with the name of the company, is that right?

A. That is correct, sir.

Q. Now just what does this mean: "To record liability Boulevard Mortgage Company for various expenses paid through the New York office for the account of Boulevard Mortgage Company."

A. I presume it means exactly what it says.

Q. Well, what expenses are paid by the New York office?

A. For what company?

Q. Well, it says, expenses paid through the New York office for the account of Boulevard Mortgage Company.

A. Well, I don't know what expenses they might be referring to.

Q. Well, they are listed at the top of the voucher, aren't they?

A. Maintenance, storage and wages; that is evidently what it was paid for.

Q. "See Boulevard Mortgage Company, journal voucher 350, recording asset from Seminole Boat Company and liability to Phipps Realty Company. For detail of these charges furnished by New York office see Boulevard Mortgage Company bookkeeping file statement". Where was the Phipps Realty Company located?

A. I don't know where their principal office was.

Q. Did they have an office in Palm Beach?

A. I think they had a resident agent there.

Q. Well, these items, repair and maintenance at least, would seem to indicate that probably was a Palm Beach item, wouldn't it?

A. Probably so, I don't know.

Q. Well, then would it be something like this: That this item of expense would be incurred by the Palm Beach Company, or Phipps Realty Company in Palm Beach,

and by them reported to New York and then charged back by New York to the Boulevard Mortgage Company for the account of the Seminole Boat Company?

A. That may be the case. I don't keep the books and I don't know how they handle that.

Q. Is that the way you size it up?

A. That looks to be the case.

Q. Well, then, this came back eventually to you for a charge on the books of the Seminole Boat Company?

A. That is correct.

Q. Books of the Seminole Boat Company were in your office?

A. That is right, sir.

Q. Well now, after the Seminole Boat Company's books left your office, that meant a complete reversal of the current, didn't it? In other words, if you incurred expense here you would have to charge it to New York and let them charge it back to Palm Beach, in some reverse method?

A. Sometimes we would send those vouchers direct to Palm Beach.

Q. Now your statements however always did, either directly or indirectly, pass through New York?

A. I think they did, sir.

Q. So that your record checked with the New York office?

A. They always have a check of all our records.

Q. And as a matter of fact, a large part of your entries are based on statements from the New York office, is that right?

A. I wouldn't say a large part of them, no, sir.

Q. A considerable part of them?

A. The books reconcile.

Q. For instance this entry in toto is based simply on a statement from the New York office, isn't it?

A. Yes, sir; it was probably accompanied by a journal voucher and a statement of expenses.

Mr. Matteson:

I think that is all at this time. I assume Mr. Hawkins is going to be around here during the trial, if anything comes up.

By Mr. Botts:

Q. Mr. Hawkins, this payment of \$5,000 to Mrs. Abel—

A. Yes, sir.

Q. —wasn't actually made by a Seminole Boat Company check was it?

A. I don't know. Mr. Alley told me that he was going to pay it; how he paid it I don't know.

Q. He discussed it with you?

A. Yes, sir.

Q. Prior to its payment?

A. Yes, sir, he told me he was going to pay it.

Q. And you approved it on his statement that the stockholders of the Seminole Boat Company had approved it?

A. I told him I thought it would be a good thing.

Q. Did you get any receipt from Mrs. Abel?

A. I presume he did, he usually does.

Q. Now then these entries, fees, Abel estate,—do you know what those were?

A. No, sir.

Q. Did Mr. Alley tell you what they were?

A. No, sir.

Q. And this bond of Mrs. Abel, you don't know what that was about either?

A. No, sir.

Q. Mr. Alley didn't discuss those with you?

A. Not those details.

Q. Now then over here in this item listed, medical expense, which seems to have had its origin in—well the first entry is December 3, 1935; it seemed to have its origin in 1935. I notice a lot of items in here under the head of Thomas, attendance fee, \$125, and then later this attendance fee became \$75.

A. Yes, sir.

Q. Did you discuss that with Mr. Alley?

A. He did with me, sir; he told me what he was going to do.

Q. Well, did he tell you what he meant by attendance fee?

A. I think he gave Mr. Thomas some money each month.

Q. Well, you don't know why it was entered attendance fee, instead of payment to Thomas, do you?

A. He can probably tell you that; I can't.

Q. You don't know?

A. I don't know why he called it attendant's fee.

Q. But anyway he told you those payments were being made to Mr. Thomas?

A. Yes, sir.

Q. On the authority of the stockholders of the Seminole Boat Company?

A. Yes, sir.

Q. And on his information thus received, that the stockholders authorized it, you approved it; is that right?

A. Yes, sir.

Q. Now then getting back to these minutes; when you made this contract with Captain Baker to operate the Seminole, which was reflected in the minutes of the company, you did that on the authority of the stockholders of the Seminole Boat Company, didn't you?

A. Yes, sir, and the other directors,—and the directors.

Q. It is a fact however, that everything that you three fellows did as officers of the Seminole Boat Company, you did it on behalf of the stockholders and because that is what they wanted, didn't you?

A. I don't know that that is a fact.

Q. You never did anything that they didn't want done, did you?

A. Well, I might have done so, I don't remember.

Q. As a matter of fact isn't it true that every act that you did with reference to the boat Seminole, whether reflected in the minutes of the corporation or otherwise, that so far as you know, and so far as you knew when you did that, you did that as reflecting the ultimate wishes of the stockholders of the Seminole Boat Company; isn't that true?

A. I think that generally that is true, excepting Captain Baker and myself were trying to charter the boat and make the most money out of it; we did a lot of things we never even consulted the stockholder about.

Q. You didn't consult, but I say, that as near as you understood it, you thought that reflected the wishes of the stockholders just the same, didn't you?

A. The wishes of the stockholders were, to make money out of the boat, and that is what Captain Baker and I were trying to do.

Q. And if there is anything like these various payments for repairs and various maintenance and so forth, as reflected by these various vouchers that have been introduced in evidence for the year 1935, those were authorized by you because of your general understanding that that reflected the wishes of the stockholders, that you should keep that boat in shape; isn't that true?

A. It was the wishes of the stockholders that the boat be kept in good shape and it was the instructions of Mr. Scott to me, to do so.

Q. And conform to those wishes of the stockholders, you took these various actions, didn't you?

A. Not to conform, but it was my general instruction to keep the boat in good shape and try to make money on it.

Q. Now then the various expenses as reflected by, I think that is the Sundry account in here, included funeral expenses of Captain Abel; were you consulted about this before they were incurred, or did you discuss them?



A. Mr. Alley told me from the very date after the accident that he wanted to take care of Thomas, wanted to take care of Abel.

Q. And you concurred in that?

A. Yes, sir.

Q. Because you were informed by him that was the wishes of the stockholders?

A. Yes, sir.

Q. Now the stockholders at that time were Mrs. Guest and Mr. John S. Phipps?

A. That is right, sir.

Q. I am referring to the time subsequent—at and subsequent to the fire?

A. That is right.

Q. And these various charges—I mean these various expenditures reflected in these entries in the books, wherein somebody paid Mrs. Abel \$5,000, and paid to or for the benefit of Thomas, amounts running up into the hundreds of dollars—those are not reflected in the books of the corporation as being a charge against anyone?

A. Well, they are on the books of the corporation—the corporation would be obligated for them.

Q. The corporation is, but over here in these pages where Mrs. Guest and Mr. John S. Phipps, and earlier, Mr. H. C. Phipps, are charged with various items, the books don't reflect how the stockholders contributed to these items, do they?

A. I don't think they have been balanced yet; I am not sure.

Q. Do you know as a matter of fact whether the disbursing agent who actually paid out these sums has ever been reimbursed by anyone for these sums?

A. I don't know as a matter of fact.

Q. Mr. Hawkins, yesterday, you said that you would have prepared for us and produce, a list of the various times when the boat Seminole had been used, and who used it.

A. I think Mr. Underwood has that statement, so far as our records show Captain Baker made a number of charters that individual records were not kept of.

Q. I was going to ask you if you had that, to produce it; and if you didn't, I just didn't want to let that slip.

A. I think Mr. Underwood has it.

Mr. Underwood:

No, I don't. I have not been able to ascertain from the files, the exact number of charters that were made.

Q. I don't mean charters, I meant, use by the owners.

A. You said, charters.

Q. Well, I beg your pardon; I meant for the times when the various owners or stockholders—owners, we will put it—

A. Used the boat?

Q. Used the boat.

A. I didn't check the record on that; but, very few times.

Mr. Underwood:

We will try to get that up.

Q. In letting you go away, I didn't want to waive that particular question.

A. The stockholders would never use the boat if there was any chance of renting it.

Q. Well, they didn't seem to have much chance.

(Thereupon the hearing was recessed until 2:15 o'clock of the same day.)

May 10, 1939, 2:15 P. M.

1768 Thereupon ROY H. HAWKINS, a witness previously called by the Respondent Phipps, resumed the stand and was examined and testified further as follows:

Re-Direct Examination.

By Mr. Underwood:

Q. I show you a photograph. Will you tell me what that is?

A. This is a photograph of the after deck of the Seminole.

Q. Does that fairly represent her condition when you last saw her?

A. Yes.

Q. Is that (pointing) one of the trophies that was mentioned here?

A. Yes.

Mr. Underwood:

I offer that.

Mr. Botts:

I have no objection.

The Court:

Let it be admitted.

(Thereupon the photograph above referred to was marked Respondents' Exhibit 3-M.)

(By Mr. Underwood):

Q. I show you another photograph. Can you identify that?

A. Yes.

Q. What is it?

A. This is the dining room or dining salon of the Seminole.

Q. Does that fairly represent that dining room when you last saw it before the fire?

A. Yes, sir.

Mr. Underwood:

I offer that. That also shows the trophies.

Mr. Botts:

No objection.

The Court:

Let it be admitted.

(Thereupon the photograph above referred to was marked Respondents' Exhibit 3-N.)

(By Mr. Underwood):

Q. Mr. Hawkins, the blueprint that is before you, can you identify that as a substantial accurate representation of the Seminole as of 1935?

A. Yes, sir.

Mr. Underwood:

I offer that. It has previously been marked Respondents' Exhibit A for identification.

Mr. Botts:

No objection.

The Court:

Let it be admitted.

(Thereupon the blueprint above referred to was marked Respondents' Exhibit A.)

Q. Mr. Hawkins, you have testified that you received no salary from the Seminole Boat Company. Do you receive any salary from the Mayaca Corporation or the Miami Shores Corporation or any of these other corporations that you enumerated yesterday?

A. No, sir. Part of my salary for a time was charged to the new Miami Shores Corporation.

Q. And the other part was charged to whom?

A. To the Biscayne Boulevard Company.

Q. Did any part of your salary come from any other source?

A. No, sir.

Q. Notwithstanding you performed functions for many other corporations?

A. That is correct.

Q. Can you illustrate for us some of the duties that you perform and some of the services that you perform for these other corporations and individuals from which you receive no remuneration?

A. Yes. For the Mayaca Corporation I supervise, with the superintendent there, the operations; I negotiate for the sale of the fruit and oranges; negotiate for the rental of land, and consult with our superintendent about the preparation of the land and the care of the grove and its maintenance. For the Miami Shores Corporation, which is now Bessemer Properties, I supervise the sale and management of their properties. I do the same thing for Bessemer Properties interests on the Boulevard. I do a great deal of work for all of the members of the Phipps' family, their sons and cousins and friends, or anybody who may be passing through here who happened to be friends of theirs. For instance, last week one of the younger members of the family was through here, and I arranged a fishing trip on Captain Starke's boat, and arranged transportation for him to and from the boat. I do things for different members of the family. I might buy a dog for them, a bird dog, or birds, or different kinds



of properties. Yesterday I bought 135 bonds for one of the members of the family.

Q. How about the Bocca Raton Company?

A. I don't have anything to do with that company, sir.

Q. Do you have anything to do with the Ocean Island Corporation?

A. No, sir.

Q. Mr. Matteson asked you yesterday if you had been designated manager of the Seminole by an individual, whether your duties would have been the same. I want to ask you whether you were ever designated as manager of the Seminole by Mr. John S. Phipps?

A. No, sir.

Q. I want to ask you whether you were ever designated as manager of the Seminole by Mr. John S. Phipps?

A. No, sir.

Q. I show you an instrument dated March 21, 1930. Can you identify that?

A. Yes. I know Mr. Scott's signature.

Q. That is Mr. Cott's signature?

A. Yes.

Q. That is the Charter of the Seminole between the Seminole Boat Company and Emil J. Stehli, is that correct?

A. That is correct.

Mr. Underwood:

I offer that in evidence.

Mr. Botts:

No objection.

(Thereupon the document above referred to was marked Respondents' Exhibit 3-O.)

(By Mr. Underwood):

Q. Mr. Hawkins, I show you another instrument dated the blank day of March, 1929, which bears only the signature of one party. Do you recognize that?

A. I remember this.

Q. Can you identify that as a copy of the Charter that the Seminole Boat Company entered into with Ann Murdock?

A. I know we made a charter with Ann Murdock, and I presume this is a duplicate of the contract, or a copy of it.

Q. This came from your files?

A. Yes; it came from my files.

Mr. Underwood:

I offer that.

Mr. Matteson:

Of course this copy is not signed. I assume it is a copy of the original which was signed.

The Witness:

I was unable to find the original.

Mr. Matteson:

Do you know whether it was signed or not?

The Witness:

That has been a long time ago, sir. I remember that this woman was the woman who hired the boat; that she just anchored it off shore; she kept it in the bay for a long time; didn't take it down to the Keys or anything like that; she kept it in the bay and was living on it in place of living in the hotel.

(By Mr. Underwood):

Q. Do you remember when the boat was chartered to Ann Murdock?

A. I remember this woman wanting the boat for that purpose, and I am sure it was rented to her. Now the records would show the date.

Mr. Underwood:

I do not think the terms of the instrument are of any importance in this case. We were asked to produce such charters as we had, and these are all that we found in our files. It is immaterial to me whether it be marked in evidence or for identification. I do not care.

Mr. Botts:

Either way suits me.

Mr. Underwood:

I have offered it in evidence. If you gentlemen object to it, then I will offer it for identification.

Mr. Botts:

I have no objection.

(Thereupon the document above referred to was marked respondents' Exhibit 3-T.)

(By Mr. Underwood):

Q. Mr. Hawkins you testified that you negotiated the sale of the Iolanthe.

A. Yes.

Q. Did you do that on your own initiative or on someone's instructions?

A. Mr. Phipps' instructions as it was his personal boat.

Q. You testified yesterday something about Mr. Riley's lack of connection with the Seminole Boat Company. Were you present at any time when you heard Mr. Scott, the president of the Seminole Boat Company, talking with Mr. Alley over the telephone?

A. Yes, sir.

Q. Do you remember when that was?

A. It was at the time the boat was sent to Palm Beach.

Q. Did you hear what Mr. Scott said?

A. Yes.

Mr. Matteson:

I object to that—

(By Mr. Underwood):

Q. Don't answer this question until we have legal argument, but I want to put it to you: will you tell us the substance of what Mr. Scott said to Mr. Alley in relation to the Seminole, as to who was to be in charge of her and where she was to go?

Mr. Matteson:

I object to that, if your Honor please—

The Court:

What occasion was this?

Mr. Underwood:

The witness said it was the time that the Seminole was sent to Palm Beach. He has not fixed the year. Can you fix the year?

The Witness:

No.

Mr. Underwood:

Other witnesses can, your Honor. What I am attempting to prove, your Honor, is another verbal act of an officer of a corporation endowing a subordinate with authority. It was consummated in words, it is true, but it is an act and it is an order. I shall have two other witnesses testifying on the same point. This is an extremely important part of our case.

Mr. Botts:

If characterizations of hearsay testimony of that type to prove a verbal act are admissible, there would be no reason for the hearsay rule. In the first place, by the very nature of things, all the witness could say was that he heard Mr. Scott talk into a telephone; he could not, except by hearsay from Mr. Scott later, or what he might have said before, from which he could draw the conclusion, that he was speaking to any particular person, and therefore he may have been speaking to anyone of a hundred or a thousand or ten thousand people; so, he doesn't know the person to whom he was speaking; in the second place, a conversation between Mr. Scott and Mr. Alley or anyone else would not thereby become admissible; it is clearly hearsay testimony, and I submit that it is clearly and totally incompetent.

Mr. Matteson:

The only people competent to testify to that would be the people engaged in the conversation. Certainly this witness cannot testify about that.

Mr. Botts:

I join in that, but I do not want to concede that even Mr. Scott would be competent to testify to that, and certainly it is hearsay from this witness.

Mr. Underwood:

Do you want to hear from me on that, Judge?

The Court:

Yes, I will have to hear from you on that.

Mr. Underwood:

The point is this, Judge: this was an order by the president of this company to the vice-president—



